Journal of Islamic Law and Culture
Vol. 11, No. 2, May 2009, 121–153

Routledge
Taylor & Francis Group

Citizenship: an Islamic perspective

Mohammad Hashim Kamali

Citizenship in its contemporary context has developed in tandem with the expansive role and functions of the nation state. The Islamic notions of belonging to a political community, territory, and a system of rule are all present in the source data of the Qur'an and hadith. Yet they remain undeveloped and also burdened with accretional jurisprudence that has developed around the notions of *dār al-Islām* and *dār al-ḥarb* (abode of Islam, and abode of war respectively). The main purpose of this essay is to contextualise the Islamic notion of citizenship with its contemporary context, while also attempting to strip the authoritative guidelines of Islam from its archaic concepts and additions that on the whole tend to be less than helpful.

This is one side of the picture I present. In another, yet quite fundamental sense, the rules of *fiqh* on residence and domicile within the wider *dār al-Islām* are far less restrictive than the Immigration and citizenship laws of the present-day Muslim countries.

Keywords: nation state; domicile; territory; Qur'an; *fiqh*; homeland; rights and duties

I. Introduction

In political history, citizenship represents a transition from a system based on the survival of the strongest to a constitutional system or the rule of law otherwise known as civil society. The word "citizen" did not formally appear until the French Revolution of 1789. In practice, however, citizenship has not always meant that all people within a certain territory had common and equal rights.

Muslim writers have generally considered nationalism and the nation state to be inimical to Muslim unity and disagreeable with Islam. Yet there are also views that see no inherent conflict between Islam and nationalism *per se*.

While the basic notion of citizenship is not alien to Islam, some of the ultra-nationalistic articulations of citizenship are less than compatible with the basic tenets of Islam on equality and justice. The topic of citizenship has remained so underdeveloped in the juristic writings of *fiqh* that one can hardly speak of a clearly defined concept of citizenship in Islamic law. Due to the absence of subject-specific literature on citizenship in the *fiqh* sources, writers have tended to subsume citizenship under *dār al-Islām* (Abode of Peace or Islamic State) and thereby identify the citizen with the member of the Muslim community. Anyone

Email: hkamali19:gmail.com (assistant: lterebessy@hotmail.com)

ISSN 1528-817X print/ISSN 1753-4534 online
© 2009 Taylor & Francis
DOI: 10.1080/15288170903273060
http://www.informaworld.com

who resides in *dār al-Islām* is a citizen and anyone who resides in *dār al-ḥarb* is an alien, unless he migrates to *dār al-Islām* and resides in its territory.[1]

The majority of Muslim commentators subscribe to the view that citizenship is not recognized in the Shari'a. Citizenship as a theme of concern does not feature in the writing of Muslim jurists of earlier times. Only during the early decades of the twentieth century, did Arab writers and jurists begin to address the matter, and even in these writings, it is not often that one can find an in-depth or exclusive treatment of the subject. Generally, the view taken is that anyone who embraces the faith and takes up domicile in *dār al-Islām* is a citizen of the Islamic state.

The Islamic equivalent of citizenship can be dated back to the renowned Constitution of Medina (623 CE).This document, the earliest of its kind, laid down the foundation for a new community (*umma*) and the city state of Medina. The native individuals and tribes of Medina and the newly arrived migrants (i.e., the *muhājirūn*) were granted protection as well as a set of rights and duties toward one another and the nascent city state of Medina. The classical Islamic view is that a member of the Muslim community in the Qur'anic scheme acquires his identity qua Muslim and member of the *umma*, both being bound to observe the Shari'a and adhere to the same set of legal norms.

I, however, have not taken this view. This is due mainly to historical changes including, for example, the disintegration of the *umma* as a political unity, which was precipitated by the downfall of the Ottoman caliphate in 1924. It seems unrealistic, even unfeasible, to me to base an understanding of a modern concept of citizenship on a framework that no longer exists. The nation state has become an inescapable reality and what we now have is a multiplicity of some 56 Muslim majority nation states that neither are politically united nor maintain levels of cooperation one could say were strong enough to sustain the notion of a common citizenship for all of their inhabitants. The historical unity of the Muslim community within the rubric of *umma* now stands in contrast with its division into a multiplicity of nation states that find their origin neither in Islam nor in *umma* but in European thought of the eighteenth and nineteenth centuries, especially relating to the French revolution of 1789.

In the past, the historical division of the world into the House of Islam (*dār al-Islām*) and the House of War (*dār al-ḥarb*), and the somewhat less than egalitarian treatment that was visited on the *dhimmī*s (non-Muslim residents in Muslim lands), reflected the political and military superiority of Muslim powers. The rules of *fiqh* have not escaped this entirely. A review of some of the provisions in the rules of *fiqh* in the light of the sources has therefore become necessary.

The nation state, which is the principal unit of political organization in the Muslim world, is also taken as a basic framework of analysis. It may be justified, perhaps, to see the nation state as a manifestation of the Qur'anic declaration "… We have made you into tribes and nations so that you may know one another. The most honoured of you in the eyes of God is the most righteous of you" (Q 49:13).

The extent to which the rights of citizens are adequately protected in Islamic law is a matter of some controversy, especially with reference to the non-Muslim citizens of an Islamic state. Islam clearly recognizes Christianity and Judaism as true religions, yet embracing the faith of Islam has been treated by writers such as Maududi as an overriding factor in determining the legal framework of citizenship. This is an erroneous assumption simply because the Qur'an recognizes the validity of other great religions and advocates freedom of religion as a basic right of their followers.

[1]Cf. Taqī al-Dīn al-Nabhānī, *Muqaddimat al-dustūr* (n.p., Kuwait 1964), 23–26.

There remains no basis, then, for the assumption that a non-Muslim cannot be a full citizen. To embrace Islam may still qualify a person for citizenship, but not in the exclusive sense, perhaps, of disqualifying a non-Muslim. The latter may also qualify on other grounds such as naturalization and domicile. The Shari'a entitles every human being to justice and the protection of a number of basic rights and liberties without any discrimination.

There is much diversity over details among the various legal schools and jurists of Islam. Since the rules of *fiqh* were developed mainly by the leading *'ulamā*' of the scholastic period, these works were influenced by the prevailing conditions of their time. Some of the rules that were formulated tended to be discriminatory in regard to the rights of the *dhimmī*s, but present-day scholars, in light of current realities in the Muslim world, follow a different course. States and governments in the Muslim societies of today are no longer fashioned, as they used to be, on the basis only of religion. The era of democracy and constitutionalism has placed a fresh emphasis on the basic rights and liberties of the citizen. These changes have in turn been reflected in the works of Muslims jurists of the twentieth century. Many advocates revisiting the rights and duties of citizens, both Muslim and non-Muslim, and reconstructing them more in keeping with the higher objectives of equality and justice, as espoused in the Qur'an and Sunnah.

II. Concept and terminology

The term "citizen" comes from the Latin word *civitas*, meaning "city". The ancient Greeks were the first to explore the idea and practice of citizenship. Their society was based on the *polis*, or the city-state. Aristotle believed that man was a political being and could not, therefore, reach his full potential without participating in the *polis*. However, the opportunity to take part in the *polis* did not extend to everyone. Women, children, resident foreigners, some labourers and slaves were not regarded as citizens and were thus excluded from the privileges of rule. For Aristotle, the main basis of distinction between a citizen and a non-citizen was his participation in giving judgment and holding office. He further added that, as soon as a man became entitled to participate in the affairs of the *polis* and hold an office, he was deemed to be a citizen of that state. In Rome, citizenship was the basic criterion which served to distinguish between the civil or political rights of the Roman citizens (*civis*) and those of the populations of the conquered territories to whom citizenship was only partially and gradually extended.[2]

Citizenship is admittedly a complex idea and connotes a wide range of meanings – so much so that it does not lend itself to a simple or a comprehensive definition.[3] As a concept, citizenship is also dynamic and evolutionary, in that it tends to vary from community to community and remains open to the circumstantial changes of time and place. The rights that are acquired by citizens are primarily of a political nature, and entail participation in the political life of the community. At present, they may be said to include, above all, the right to participate in rule-making institutions, the selection

[2]Cf. Nawaf Salam, 'The Emergence of Citizenship in Islamdom,' (1997) 12 Arab Law Quaterly 125–126

[3]Cf. Partington, M. 'Citizenship and Housing' in Robert Blackburn (ed.), *Rights of Citizenship* (Mansell, London 1993) 124; Haitham Manna, *Citizenship in Arab Islamic History,* Manar Wafa and Wasim Wagdy (trs.) (Cairo Institute for Human Rights Studies, Cairo, 1996) 18.

of leadership, and the right to participate in the determination of social priorities through public debate and the exercise of the freedom of speech.[4]

Citizenship defines some of the most critical aspects of the relationship between the individual and the state.[5] Citizenship under contemporary law is established on the basis of blood ties and/or place of birth. Naturalization is also recognized as a basis on which citizenship is acquired. Modern citizenship has aimed at eliminating all forms of hereditary or group privilege and requires that all citizens be equal before the law.

References to *umma* and *qawm* also occur in the Qur'an, referring to groups to which an individual may have a sense of belonging and attachment. In a passage where the text allowed the early Muslim community of Medina to wage war in the cause of God and against oppression, a reference is also made to homeland and family: 'How could we refuse to fight in the cause of God, seeing that we were turned out of our homeland (*diyārinā*) and our families' (Q 2:246). Elsewhere the text refers again to these factors and on this occasion enjoins justice and fair treatment for those who "never fought you over religion nor evicted you from your homes (*diyārikum*)" (Q 60:8). The Qur'an also addresses the Prophet Muhammad in the following terms: "Remember (when) Ibrahim said: O my Lord: make this city (*balad*) one of peace with security." The idea of belonging to a place highlighted by a sense of affinity with its landscape, fruits and safety is also depicted in the following verse: "By the fig, and the olive, and the mount of Sinai, and this city of security (*al-balad al-amīn*) (Q 95:1–3). The sense of attachment to one's balad is further accentuated when this becomes the object of a divine oath taking in a verse addressed to the Prophet Muhammad, in a *sūra* which also bears the name "*al-Balad*": 'I do call to witness this city, and you are a freeman of this city, and the (magical) ties of parent and child' *(*Q 90:1–3).

The parent–child bond is clearly read into the notion of *balad*, the homeland, and the freedom which is also enjoyed as a result of belonging to it. By virtue of this reference, this *sūra* is also known to be a Meccan *sūra*, as this was the place where the Prophet and his parents resided. The Prophet himself went on record to express his love for his birthplace Mecca, when he was compelled to leave it. Ibn 'Abbās reported in this connection that grief had overcome the Prophet when on his way to Medina; he paused for a moment at Hazwara near the marketplace of Mecca and said: 'By God! You are the best of all places in the eyes of God and most beloved on the face of the earth to me. Had it not been for the fact that your inhabitants evicted me, I would not have left you.'[6] Commentators have drawn the conclusion that the forced eviction of Muslims from their homeland was the basic cause of the Qur'anic validation of armed struggle and *jihād*. This was not allowed during the first 12 years of the Prophet's campaign in Mecca, where he propagated Islam through peaceful means. Only when the Muslims were subjected to persecution and thrown out of their homeland were they allowed to resort to *jihād*.

III. The Islamic conception of citizenship

One of the general attributes of Islam that needs to be taken into account is its claim to universality and the assertion that its standards of equality transcend the particularities

[4]Keith Ewing, 'Citizenship and Employment' in Blackburn (n 3) 99.
[5]Waqar Ahmad and Charles Husband, 'Religious Identity, Citizenship and Welfare. The Case of Muslims in Britain' (1993) 10 *American Journal of Islamic Social Science* 216.
[6]Ibn Mājah, *Sunan Ibn Mājah* (Cagli Yayinlari, Istanbul 1401/1981), Hadith no. 3108.

of tribe and nation and, for that matter, of the nation state. This is because of Islam's rejection of all racial, ethnic and hereditary criteria of distinction, which constitute the foundations of nationalism. The only valid ground on which any individual may be deemed superior to another in Islam is God-consciousness and piety (*taqwā*).

Despite the awareness the Qur'an has conveyed of the reality of people's attachment to their place of birth and residence, it makes no direct reference to citizenship. This may be indicative of a certain openness of outlook above the restrictive framework of citizenship in modern times. The Qur'an may have left the subject of citizenship undefined, but the position of man himself, in his pre-social state, is ennobled in the Qur'an as God's "vicegerent on the earth" (Q 2:30).

The following Qur'anic verse is often quoted in evidence to the effect that religion and domicile are the basic requirements of citizenship:

> Surely those who believed and fled (their homes) and struggled hard in God's way with their wealth and their lives, and those who gave shelter and helped – these are friends of one another. And those who believed but did not migrate, you are not responsible for their protection (*wilāya*) until they migrate. (Q 8:72)

The reference to protection in this verse has been a matter of some discussion among the commentators. The basic meaning of the text seems to be clear, and the reference is, of course, to the Migrants and Helpers, *Muhājirūn* and *Anṣār*. The migrants were the early believers who were persecuted, fled their homes and then formed a community in Medina alongside those who gave them shelter and helped them (i.e., the *Anṣār*). But there were some who chose to remain in their homes and did not migrate to Medina. The nascent community in Medina could not undertake to protect the interests of such persons, and this is what is meant by "you are not responsible for their protection".

The Prophet-cum-head of state himself did not insist on embracing Islam as a precondition of citizenship. The Constitution of Medina acknowledged and declared the Jews of Medina to be part of the *umma* that the Prophet organized immediately after his migration to Medina. Moreover, there is nowhere a requirement in the sources of Shari'a to say that a non-Muslim resident, the so-called *dhimmī*, must become a Muslim first before he or she can become a citizen of an Islamic state.

IV. Muslims and the question of automatic citizenship

Historically, citizens of Muslim states were almost totally free to travel and reside in other parts of the Islamic domain. Individuals, scholars and traders who moved and migrated from the Abbasid state, for instance, to Spain did so without "any hardship, restriction or any privileges".[7] This was the situation under the Abbasids as well as under the Fatimids in Egypt and Andalus. The sense of Muslim solidarity remained a reality even after the coming into being of these three competing power centers in the Muslim lands. Smaller sultanates and power centers within the Abbasid domain emerged and multiplied, but Muslims were free and it was easy for them to pass from one state or principality to another and reside where they wished. Political divisions of the *umma* were for a long time regarded as a harmful innovation (*bid'a*) that was unacceptable in principle and Muslims continued to be united in many other respects.

[7]Ibid., 130.

There was no difficulty in principle for a Muslim to be "employed in any political or administrative system where he happened to be residing". One can cite examples of such prominent figures as al-Shafi'i, Ibn Khaldun, al-Ghazali, Ibn Batuta and many others, who resided in a variety of places and were employed in various administrative regimes throughout the Islamic lands. They changed their employment, following the common practice of taking positions in the employ of different rulers in distant lands. "No Muslim could [thus] be an alien in any Muslim land."[8] Full and immediate community membership was acquired by any Muslim who took up residence in a Muslim community other than his original domicile without any formalities. It is in this sense, according to 'Abd al-Wahhab al-Affandi, the word "Muslim" was the closest equivalent there was to "citizen", for being a Muslim conferred full citizenship status. Al-Affandi has criticized Bernard Lewis for his assertion that citizenship as a concept is not known in Islam and that no equivalent to the word existed in Arabic, Persian or Turkish. "This is an erroneous assertion notwithstanding the fact that many Arab researchers have concurred."[9] Al-Affandi addressed this issue in a full-length article in which he spoke critically of Lewis and others who held that the concept of "a political community" and citizenship as a political concept did not exist in Islam. In addition, in Islam, the political and religious community were concurrent, borne out by the fact that the word "Muslim" was the nearest equivalent to "citizen". To say that the two were concurrent is not the same as to say that a political community, or citizenship for that matter, did not exist. Attention is drawn in this connection to a hadith, recorded in both Bukhari and Muslim, which declared that "the lives of Muslims are equal (in respect of retaliation and *diyya*) and they are a unity against their opponents. When the least among them offers safe conduct to someone, it becomes a commitment on all of them."[10] "The least among them", according to commentators, include women and children, although most have excluded the latter.

Then came the era of the struggle for independence from Western colonialism, and the many long years of confrontation that followed. The anti-colonialist campaign was conducted with the participation of all the *muwāṭinūn* in the former colonies; Muslims and non-Muslims struggled side by side and made sacrifices. When they won that campaign and gained independence for their homeland, they sought to regulate their national life through a national charter and constitution. One of the major gains of this struggle which was articulated in many of these constitutions was equality before the law for all the citizens.

The realities of unity within the ranks of the *umma* have drastically changed over time and the freedom of travel and residence once enjoyed in all parts and territories under Muslim rule does not exist any more. Much of this, one might say, is a consequence of economic and political changes experienced as a result of the prevalence of the nation state. Economic differentials between Muslim countries have given a new dimension to the exclusivities of nationalism. Yet the basic sentiment of ummatic unity that is grounded in religion may still be said to be a reality, and a hope, according

[8]Abdul Malik A. Al-Sayed, *Social Ethics of Islam: Classical Islamic Arabic Political Theory and Practice* (Vantage Press, New York, 1982) 220; Muhammad Yūsuf Mūsā, *Al-Islām wa l-Ḥayāt: Dirāsāt* wa *Tawjīhāt* (Maktabah Wahbah, Cairo 1961) 177.

[9]'Abd al-Wahhāb al-Affandī, 'I'ādat al-naẓar fī al-mafhūm al-taqlīdī li-al-jamā'a al-siyāsiyya fī al-islām: muslim am muwāṭin?' (2001) 22(264) *Al-Mustaqbal al-'Arabī* 144.

[10]Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, trans. Muhammad Muhsin Khan, vol. 9 (Qazi Publications, Lahore, 1979) (Al-Ḥāfiz al-Mundhirī) 102; Al-Ḥāfiz al-Mundhirī, *Mukhtaṣar Sunan Abū Dāwūd,* ed. Ahmad Muhammad Shakir and Hamid al-Faqi (Dār al-Ma'rifa, Beirut n.d.).

to Hassan al-Saffar, "in the hearts of Muslims that can be utilized for greater cooperation and closeness within the framework of the currently prevailing conditions".[11]

The lines of division between countries and nations, including Muslim countries, have become more obvious and have taken root during the second half of the twentieth century. This is due to a variety of factors, chief among which may be said to be the economic factor and the unwillingness of the richer countries to share their wealth with the poorer nations. Among the Muslim countries, Saudi Arabia and the Gulf countries, are perhaps well known for their stringent policies on nationality and immigration. With the exception of some limited concessions granted to citizens of the Gulf states in the area of commerce,[12] it is generally quite difficult for Muslim foreigners to settle in Saudi Arabia and obtain citizenship.[13] Saudi Arabia is here cited as an example in order to pursue the discussion over Hamidullah's conclusions, but Saudi Arabia is by no means an exception. The citizenship laws of almost all Muslim countries have departed from the open door attitude and receptiveness of the kind that is associated with the Qur'anic concept of *umma*, by introducing restrictions that have altered the whole picture of openness to one of its opposite.

There is little doubt that the necessity that Hamidullah referred to as an explanation for the drastic changes of citizenship policies of Muslim governments has now become the general rule. Nationality and citizenship laws currently in force in Muslim countries have marked a near-total departure from the rules of *fiqh* that were formulated in earlier times, that is, prior to the advent of the nation-state. The *fiqh* provisions were generally premised on the idea of unity within the boundaries of *dār al-Islām* and, by implication, the Muslim homeland. Yet the juristic rules of *fiqh* may also be said to have assumed an equally questionable premise of dividing the world into the binary division of *dār al-Islām* and *dār al-ḥarb* (also referred to as *dār al-kufr*, "the abode of unbelief"). Apart from the fact that no clear authority for this classification can be found in the Qur'an or the Sunna, the classification seems to proceed on the acceptance, in principle, of belligerency and war as the normal pattern of relations between Muslim and non-Muslim powers.

The Islamic Declaration of Human Rights 1985 does not contain a separate clause on citizenship. There are now over 50 independent Muslim states and, although they maintain levels of cooperation in various organizations and there is awareness and recognition of unity in faith among them, they are otherwise totally separate. Political tensions rise and fall and often mar the climate of understanding and cooperation among nations. Initial hopes that the advent of globalization would encourage openness and the prospects of better relations between nations to enable their people to enjoy better access, freedom of movement and residence have not been realized.

---

[11]Shaykh Ḥasan al-Saffār, 'Al-waṭan wa-al-muwāṭana': al-Huqūq wa'l-Wājibāt' (1996) 10 *Al-Kalima*, 19.

[12]For a discussion of the business laws of Saudi Arabia see Nabil Saleh, 'Company Legislation the Gulf: Recent Developments' in HL Ruttley and Chibli Mallat (eds), *Commercial Law in the Middle East* (Graham and Trotman, London 1995) 92–103.

[13]In all appearance, the Nationality Ordinance *(al-niẓām al-jinsiyya*) of Saudi Arabia 1974 contains (under Article 9) terms that are not very different from parallel regulations in other Muslim countries. Saudi nationality may thus be conferred on a person who is adult and sane, and a person of good character, who has no record of criminal conviction for six years at least prior to his application and "has obtained a permanent resident status in the Kingdom of Saudi Arabia for a minimum of five years in accordance with the special regulations that lay down certain requirements". It seems that official policy makes fulfilment of this last condition considerably more restrictive than the legal text would appear to suggest.

Muslim countries should still work together to build on their bonds of unity and nurture that spirit so as to make it a reality as it once was.

V. Second class citizens among Arabs – the Mawālī

The pre-Islamic system of patronage (*walā'*) survived and presented a problem vis-à-vis the Islamic teachings on equality within the Muslim community, including those who joined the new religion. *Walā'* entrenched itself as a basis for the superiority of Arabs over non-Arabs and slaves, who remained under the patronage of their former masters even after their release from slavery. Tribalism and *walā'* became obstacles to social cohesion and the development of citizenship along the lines of the egalitarian teachings of Islam. As one commentator has noted with reference to *walā'* the prevalence of *walā'* among the Arab warrior tribes, and then the Arab Islamic empire, increasingly rendered the concept of citizenship a function mainly of power rather than religion.[14] What it meant was that religion translated itself into a basis of discrimination between Muslims and *dhimmīs*, but there was no religious basis for discriminating against the *mawālī*, who were Muslims, albeit of non-Arab origin. This level of discrimination was a function of power and domination of a kind that eventually destroyed the social equilibrium of Arab society in the dynastic period. Our reading of history also needs to be adjusted due to historical changes.

Most of the Persian prisoners of war who embraced Islam became the *mawālī* of the Arab warlords. There were instances when some of them regained their status as equal citizens through agreements on the exchange of war prisoners, or personal prominence, but most of the *mawālī* were second-class citizens who were treated almost on par with the slaves. The typical Arabian tribe thus consisted of three classes of persons, namely the *mawālī*, the Arabs themselves, and the slaves. Only the Arab Muslims enjoyed full civilian rights and took upon themselves the warrior duties of defence against external aggression, and "none but an Arab was eligible for judgeship".[15]

The second Caliph 'Umar, who instituted a pension and an army register, actually departed from the more egalitarian stance of his predecessor when he gave different classes of people entitlement to differentiated allowances. Muslim armies in their camps and new locations were organized along tribal lines and the *mawālī* were accorded a status inferior to that of Arab Muslims. The *mawālī* were naturally angered with their lot, and it was one of them, Abu Lu'lu', the slave of Mughira b. Shu'ba, who assassinated the Caliph 'Umar. One of their grievances was that they were not given equal shares from the funds of *bayt al-māl*.[16] This situation was further exacerbated during the time of Caliph 'Uthman, when tribal and family ties verging on nepotism became a feature of his government and a further cause of instability that was partly accountable for his assassination.

The Umayyad Caliphs followed this precedent, differentiated the Arabs from the *mawālī* and went to excess by imposing the poll tax on the latter even after they had professed Islam. They were also precluded from appointment to political and administrative positions in the government that were reserved for Arab nobility, and from participation in state affairs. An Arab would not agree to his daughter's marriage to one of the *mawālī*, and although they served in the army, they were not given the

[14]Manna (n 3) 55.
[15]Id., p. 311; Manna (n 3) 54.
[16]Manna (n 3) 39.

same allowances and were assigned to infantry divisions "and other such treatments that the Arabs would not like to have for themselves".[17]

Many historians have held the view that the Arab discrimination against the *mawālī* was a major incentive for their persistent rebellion, which led to the collapse of the Umayyad state. During Mu'awiya's time, the *mawālī* joined the rebel faction of Mukhtar b. Abi 'Ubayd. They then joined hands with the Kharijites, whose egalitarian views on many contentious issues appealed to them, and also took part in the rebellion of 'Abd al-Rahman b. al-Ash'ath.[18]

Following the collapse of the Umayyads and the establishment of Abbassid rule, there was an almost total reversal of the previous status quo. The Abbassid rulers relied on the *mawālī* and entrusted them with high positions in government and many other privileges in preference even to the native Arabs. The Abbasid movement is often characterized as "a movement of *mawālī*s to exact revenge on Arabs and demolish their state". The violent anti-Arab *shu'ūbiyya* (lit. popular or people's) movement that spread widely among the *mawālī*, especially the Persians, with the aim of combating Arab superiority, seems to have largely succeeded in its objectives. The *mawālī* became powerful both under the Abbasids and in the Fatimid state of Egypt. As in the Abbasid state, the *mawālī* under the Fatimids were of different races, but "the bulk of them were black Sudanese" and they played a major role in state policy and administration.[19]

The *mawālī* success was partly due to their superiority in literary pursuits. Under Umayyad rule, when the *mawālī* were excluded from leading government positions, they occupied themselves with acquisition of knowledge in various fields including literature, history and Islamic sciences. Most of the Abbassid rulers took wives from among the *mawālī* – some were the freed slaves of their predecessors. Apart from what is said of the beauty of non-Arab women, it was easier for the rulers to know the *mawālī* women through personal contact – unlike the Arab women who were customarily not allowed to interact with men. Thus it is known that the mother of the Caliph al-Ma'mun (d. 198/813) was a Persian, the mother of al-Mu'tasim (d. 218/833) was Turkish, and the mothers of al-Mutawakkil (232/847) and al-Muqtadir (295/908) were Romans. A similar account is given of the Fatimid rulers and those of the Mamluks in Egypt – one of the Mamluk Sultans, Najm al-Din Ayyub (684/1250) married a former slave and most of his army consisted of slaves of non-Arab origin.[20]

VI. *Dār al-Islām* and *dār al-ḥarb* revisited

The economic realities of the contemporary world have already made the nation state in many ways marginalized and pointed to the greater utility of the wider geographical allignments of nation states.[21]

---

[17]Ḥasan Ibrahim Ḥasan and Ali Ibrahim Hasan, *Al-nuẓum al-Islamiyyah* (Maktaba al-Nahda al-'Arabiyya, Cairo n.d.) 311; Al-Sayed (n 8) 184.

[18]Ḥasan Ibrahim Ḥasan (n 17) 312. The Kharijites considered the Imamate the right of any Muslim – Arab, non-Arab, black or white – provided he obtained the homage or *bay'a* of the populace. Some of them, especially the *Shabābiyya*, also sanctioned the Imamate of women. Many of the Kharijites betrothed their Arab women relatives to the non-Arab *mawālī* .

[19]Al-Sayed (n 8) 186.

[20]See for detail Ḥasan Ibrāhīm Ḥasan (n 20) 313–14.

[21]For detail see Kenichi Omhae, *The End of the Nation State: The Rise of Regional Economics* (The Free Press, New York 1995).

In any case, the nation state idea has its roots in the European political thought of the pre-and post- industrial revolution period, which has not proven as good for the former colonies and emerging developing nations as it might have for the colonial powers themselves. Rapid advances in communication, science and technology and the globalization of the market place might be leading the world of the twenty-first century to a new phase of history where fresh levels of cooperation and alliances mark a departure from the nation state phenomenon to new forms of political organization. Indications are that the Muslim *umma*, which happens to combine most of the under-developed countries of the world, has little choice but to move closer to the idea of larger, more effective and economically viable forms of organization among themselves. This might also encourage, very gradually perhaps, a revision of the formal framework for citizenship and wider prospects for defining the political relationship of the individual with the ruling authorities – as well as a wider framework also perhaps for his civic and humanitarian rights and obligations.

VII. *Umma*, nation-state and citizenship

Prior to 1258 (the collapse of Baghdad at the hands of the Mongols), Muslim societies had been built around a central ideological framework. The concept of *umma*, the community of believers, rather than that of the nation state, held a prime position in this framework. The common belief in one God and shared religious practices, such as prayer, fasting and pilgrimage, signified the core of that unity. Within it, there was considerable divergence of custom and culture, as well as scriptural interpretation, added to which was the development of a cosmopolitan society at the center of the Caliphate. Yet the era of dynastic rule and the imperial system of medieval times were showing signs of inner weakness, which had yet to find outward expression. At the dawn of eighteenth century, the Ottoman empire still controlled much of the Balkan Peninsula, most of the Mediterranean coast of Africa, and virtually all of the Arab lands. The Mughal Empire continued to be the largest political unit in South Asia and the Safavid Empire ruled Persia. There were also long established Muslim Khanates in Central Asia which stretched from Eastern Europe to China. In Southeast Asia and West Africa, new caliphates and sultanates were emerging due to the influence of Muslim teachers and merchants and the inner changes in the tribal structure of local societies.

By the end of the eighteenth century, the European Renaissance and the attendant technological advances marked the onset of colonialism and the eventual domination of almost the whole of the Muslim *umma,* culminating in the formal abolition of the Ottoman Caliphate in 1924. Following their military subjugation, Muslim societies were transformed through replacement of their basic institutions, educational systems, laws and even languages of learning. One major political transformation that colonialism brought along with it was the emergence of the nation state, which then itself became the rallying point of the independence movement of twentieth century.[22]

Terms such as *umma* and *qawm*, which are sometimes used as equivalent to 'nation', occur in the Qur'an, where both simply refer to a group of people. Other equivalents expressions are also found in the Qur'an for tribes, sub-tribes and clans,

[22]See for a general account Normal Daniel, *Islam and the West: The Making of an Image* (rev. edn, Edinburgh University Press, Edinburgh 1993); Ansari and John Esposito (eds), *Muslims and the West* (Islamic Research Institute, International Islamic University, Islamabad 2001) 250ff.

but there is no expression in the Qur'an that conveys the precise meaning of nation, nationality or nation-state.[23]

VIII. Unity and equality: a re-examination of the *fiqh* rules

There is conclusive evidence in the Qur'an on the unity of the *umma* as an ideological entity beyond and above divisions on the bases of class, race and language. The Qur'an thus declares: "Verily this nation of yours constitutes one nation and I am your Lord, therefore worship Me (alone)" (Q 21:92); "Verily this nation of yours constitutes one nation, and I am your Lord, be mindful of Me" (Q 23:52).

There is little doubt that the basic criterion of membership of the *umma* is unity in faith, but there is evidence to suggest that *umma* also implies political unity and, as such, includes in its ranks non-Muslims who declare allegiance to an Islamic government. This is borne out by the fact that the *umma* came into being after the Prophet's migration to Medina when the nascent community of believers, who were a religious *umma* in Mecca, formed a government under the leadership of the Prophet. The *umma* that was formed in Medina was both religious and political, as it was open to including non-Muslims within its fold. The Constitution of Medina thus provided: "The Jews of Banū 'Awf constitute a community (*umma*) with the believers" (Art. 26). The succeeding eight articles of this constitution gave other Jewish tribes the same status as that of Banū 'Awf. This obviously meant that the Jews constituted a part of the community and were integrated into the political fabric of the *umma*. As for their choice of religion, the same document provided in another clause: "For the Jews is their religion and for the believers their religion."[24] This clause has in fact reproduced *in toto* a portion the Qur'anic verse 109:6, which incorporates the same declaration.

Equality is the basic norm of Shari'a that must apply to all citizens, Muslims and non-Muslims alike. The Caliph 'Ali clearly confirmed this in his renowned statement concerning the non-Muslim citizens that "they have the same rights and the same obligations as we have".[25] The statement of principle here is founded in the Qur'anic proclamation that "we have bestowed dignity on the progeny of Adam" (Q 17:70), and the hadith of the Prophet that declared: "People are as equal as the teeth of a comb."[26] The Prophet-cum-head-of-state clearly declared his commitment to the fair treatment of *dhimmīs* when he said, "Whoever annoys a *dhimmī*, I shall be his opponent in this world and his opponent on the Day of Resurrection."[27]

The Qur'anic injunctions on justice are all conveyed in the spirit of objectivity to benefit the whole of mankind, regardless of the particularities of race and creed. 'Abd al-Qadir 'Awda was by no means an exception when he wrote that the *nuṣūṣ* (textual

---

[23]Cf. Walid Idris Said Sharaiyra, *Right and Freedom of Movement in Islam* (A.S. Noordeen, Kuala Lumpur 1999) 208.

[24]Constitution of Medina (known in Arabic as Dustur al-Madīna). An English translation of this document appears in Montgomery-Watt, *Islamic Political Thought: The Basic Concepts* (Edinburgh: Edinburgh University Press 1968; Said Ramadan, *Islamic Law: Its Scope and Equity* (2nd edition, Muslim Youth Movement of Malaysia, Kuala Lumpur, 1992) 124–125.

[25]'Ali ibn 'Umar al-Daraqutnī, *Sunan Daraqutnī*, ed, Al-Sayyed 'Abd Allah Hashim, vol. 2 (Dār al-Ma'rifa, Beirut 1386, A.H.) 350; 'Ala al-Din al-Kasānī, *Badā'ī al-sana'ī fi Tartīb al-Sharā'i'*, Vol. 7 (Matba'at al-Istiqama, Cairo 1956) 100.

[26]Al-Muttaqī al-Hindī, *Kanz al-'ummāl fī Sunan al-Aqwāl wa'l-Af'āl* (Dakan, Hyderabad 1313, A.H.) hadith 24822; Subhi Rajab Mahmassani, Arkān Ḥuqūq al-Insān fī'l-Islām (Dār al'Ilm li'l-Malāyīn, Birut 1979) 261.

[27]Al-Muttaqī al-Hindī (n 26) hadith 10913.

rulings) of the Qur'an and Sunna are premised on equality in its absolute and unqualified sense, which encompasses the whole of mankind without "any exception or recognition of superiority in favour of any individual, group, nationality and race".[28] When one reads in the Qur'an, for instance, that "God commands justice and fair dealing" (Q 16:90), or the injunction "when you judge among people, you judge with justice" (Q 4:58), or the Prophetic hadith that "both of the litigating parties must present themselves before the judge" and be granted equal opportunity to present their case; or the hadith that "the *Imām* is like a shepherd and he is responsible for his subjects" – all of these are general and apply to Muslim and non-Muslim citizens alike. Commenting on the universality of Qur'anic justice, al-Nabhani wrote, "It is not permissible for the government to discriminate between the various strata of its citizens in the adjudication and management of their affairs. It is on the contrary imperative to treat them all equally regardless of their race, colour and religion."[29]

Detailed studies of the Qur'an and Sunna on equality show a certain tendency, both in the scholastic works of the *madhāhib*, and also even in works of more recent origin, to stand in contrast to the normative teachings of the Qur'an and Sunna on the status of non-Muslim citizens. Some writers have thus been persuaded to take discriminatory positions that do not correspond with the preponderance of evidence in the sources. Historical aberration from the norms of equality are also noted in the treatment of non-Arab Muslims who resided in Arab lands (i.e., the *mawālī*, discussed above). Some of the earlier conclusions of *fiqh* in this area were decidedly circumstantial and reflected the vicissitudes of power politics, hostile situations and shifting positions in international relations. Thus, according to one observer, the somewhat unrealistic traditional dichotomy between *dār al-Islām* and *dār al-ḥarb* was a response to the Mongol invasion of the Muslim heartland in the seventh/thirteenth century. Many Muslim jurists, especially of the Hanafi school, insisted that territories conquered by Mongols remained part of *dār al-Islām*.[30] Some of the juristic conclusions that were consequently drawn were less than egalitarian, as they advanced a certain viewpoint and purpose that could not be said to be a matter of axiomatic knowledge nor could they be said to be confined to the obvious reading of the text.

In his book, *The Muslim Conduct of State*, Muhammad Hamidullah has, much to his credit, discussed the *dhimmī* and *musta'min*, but has nowhere attempted a classification of ranks among the citizens of an Islamic state. In a similar vein, in his 1993 publication entitled *Ḥūqūq al-Muwāṭana* (Citizenship Rights) Rashid al-Ghanoushi has rightly observed that "the citizens of *dār al-Islām*, whether Muslim or non-Muslim, that is, regardless of their creed, bear the one and the same nationality."[31] There is obviously only one type of citizenship which constitutes the basis of equal rights and duties. Absolute equality in all rights and obligations is not a necessary corollary of this. What it basically means is that the unitary concept of citizenship does not admit of any direct or implied superiority of some of its bearers over others.

---

[28]'Abd al-Qādir 'Awda, *Al-tashrī' al-jinā'ī al-Islāmi Muqārinan bi'l-Qānūn al-wad'i,* vol. 1 (Maktabah Wahbah, Cairo 1401/1981) 35.

[29]Al-Nabhānī (n 1) 19.

[30]Khalid Abou el Fadl, 'Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries' (1994) 1(2) *Islamic Law and Society* 183.

[31]Rashid al-Ghanoushi, *Ḥūqūq al-muwāṭana, Huquq Ghayr al-Muslim fi'l-Mujtama' al-Islami* (2nd edn., Al-Ma'had al-Alami li'l-Fikr al-Islami, Herndon, Virginia and Tunis, 1413/1993) 66. See also al-Nabhani (n 1) 19 to similar effect.

However, when it comes to certain rights and privileges, there are admittedly some differences, which may be said to be justified because of the difference of religion. The Shari'a thus exempts the *dhimmīs* from certain obligations in the areas of personal law, criminal law, military service and *zakāh*.[32] The *dhimmīs* are on the other hand required to pay a poll-tax (*jizya*), which is equivalent to *zakāh* and imposed in return for the security and protection that the Muslim state offers. *Jizya* is only imposed on able-bodied individuals and precludes children, women, the elderly, the invalid and even the monks.[33] Much has been said about *jizya* and many have regarded it as a kind of punishment and humiliation, a view which may be somewhat exaggerated, and the attempt to read this into the lines of the relevant Qur'anic text on *jizya* is also unwarranted. One of the main objectives of *jizya* was to facilitate a peaceful solution to hostility. Non-Muslims who engage in fighting against Muslims are thereby given the option of making peace by agreeing to pay the *jizya*. In this sense, *jizya* is seen as a means by which to legalize the cessation of war and military conflict with non-Muslims. I shall presently consider the argument that *jizya* is no longer applicable under present conditions and also examine the Qur'anic provision on *jizya* (Q 9:29).

IX. Rights of citizens

The basic norm of Shari'a concerning non-Muslim citizens is equality of rights and obligations to those of their Muslim compatriots.[34] Six basic rights are discussed in connection with citizenship: the right to candidacy and nomination to government positions, the right to participate in elections, the right to be consulted in community affairs, the right to criticize political leaders, the right to disobey a deviant command, and rights to welfare and education. Our discussion is followed by a discussion of the basic duties of citizens.

It will be noted at the outset that this treatment of the rights and duties of citizens includes both Muslims and non-Muslims alike and, unless there is a specific divergence from this premise, the basic principle of equality prevails. But before we address the specifics of rights and duties of citizens, some observations must be made on historical developments.

During the post-colonial period, citizenship rights have on the whole been poorly observed in Muslim countries due to the prevalence of dictatorship, military *coups d'état* and a widespread disregard for basic rights and liberties. Progress in this area has been impeded to some extent by the complexities of the situation, especially in countries with religious minorities who had conflicting interests and demands. One may be able to find exceptions to this otherwise poor record in some countries or certain periods, but the general position still remains that, despite elaborate constitutional clauses on basic rights and liberties, these have largely remained theoretical, even decades after the promulgation of these constitutions. This general pattern extends to countries, such as Saudi Arabia, Iran, Sudan and Pakistan, that have proclaimed themselves to be Islamic states.

One of the reasons why citizenship rights of non-Muslims, especially Christian minorities, in Muslim territories were not addressed during the colonial period was their privileged status and the protection they received from European powers. This

[32]See for details al-Nabhani (n 1) 27, 31.
[33]Cf. Muhammad Salim Ghazawi, *Ḥurriyyāt al-al-'Ammah fī'l-Islam* (Mu'assasa Shaba al-Jami'a, Alexandria, n.d.) 90–91.
[34]Cf. Muhammad Quṭb, *Shubhāt ḥawla al-islām* (Cairo 1954) 176.

situation continued even after colonial rule under the capitulation regime, whereby non-Muslim residents were not even subject to the jurisdiction of the national courts in the newly emerging states. The privileged status that European residents of these countries enjoyed apparently emerged as disadvantageous for them over the longer term, as it impeded their integration into local communities and issues pertaining to their status were not addressed by the legislative and judicial institutions of the host countries. A certain imbalance was also noted in the writings of such influential figures as Syed Qutb and Maududi, who sought to make exclusivity and religious discrimination the basic principle of social and political organization within the Islamic state.[35] In their writings, non-Muslim citizens were treated as second-class citizens who were not entitled to be employed in "key government positions" or to participate in legislative assemblies. They were treated as *dhimmīs* and protected groups of people who need not be integrated in a body politic created by Muslims for Muslims. Citizenship-related issues were once again neglected, if only because these writers were content with a regime of discrimination. In al-Affandi's assessment, these writers did not even go as far as the fifth/eleventh century writer, Abu l Hasan al-Mawardi, who had held that a non-Muslim could be appointed to ministerial posts. A corrective was then called for and it was provided in the writings of Fathi Osman, Selim al-'Awa, Fahmi Huwaydi, 'Abd al-Wahhab al-Affandi, Tawfiq al-Shawi, Rashid Ghanouchi and others, who have advocated total equality for all citizens.[36]

'Abd al-Hamid Mutawalli and Tariq al-Bishri are of the view that Islam advocates equality between Muslims and non-Muslims in most of their rights and duties. The sources of Shari'a contain a number of general principles that could provide the basis of an egalitarian regime of rights and duties for non-Muslims. Yet the early jurists did not tread that path and did not aim to establish total equality between Muslims and non-Muslims. Inequalities existed in earlier times and perpetuated themselves, partly due to the fact that Islam became the foundation of a state which also symbolized the unity in faith of the Muslim community. Total equality under those conditions may not have been feasible. But since the introduction of modern political structures and constitutions, the Muslim world has undergone a transition and it is now founded on national unity rather than unity in faith. Under these conditions, equality of rights and obligations for different religious denominations is a realistic prospect. 'Abd al-Wahhab Khallaf has similarly noted that the status of non-Muslims in the midst of the larger Muslim community in earlier times was affected not only by the religious factor, but also by political considerations. It is now important that the Christians of Egypt, for example, are no longer made to suffer inequalities but that a spirit of fraternity and trust should be encouraged to guide the question of equality in rights and obligations.[37]

It is also important to note that the rules of *fiqh* on the status of non-Muslims and *dhimmīs* were a creation not so much of a central government or of state functionaries, but mainly of individual jurists and *fuqahā'*. The rules of *fiqh* were thus developed by men of religion and scholars of Shari'a in accordance with the methodology of *uṣūl al-fiqh* and *ijtihād*. The modern nation-state has departed from that premise. The state

[35]Cf. Gudrun Kramer, *Dhimmī or Citizen*, in Jorgan Nielsen (ed), *The Christian-Muslim Frontier: Chaos, Clash or Dialogue?* (I.B. Taurus, London 1998) 43.
[36]Al-Affandī (n 9) 147–149.
[37]Views recorded in Ṭāriq al-Bishrī, *Bayn al-jāmi'a al-dīniyya wa'l-Jāmi'a al-waṭaniyyah fi'l-fikr al-siyā sī* (Dār al-Shurūq, Cairo 1418/1998) 36–37.

exercises its sovereign authority on the basis of a constitution and its legislative function is usually entrusted to an institutionalized body, be it a legislative assembly, parliament or consultative council. There is, in addition, an attempt in many of the applied constitutions of Muslim countries to separate religion from politics and base the laws of administration and government not on the religious but on the nationalist identities of the state.[38] Based on this analysis, some commentators such as Fathi Osman, Selim al-'Awa, Tariq al-Bishri, and al-Affandi have even held it permissible for a non-Muslim to be elected head of state. They explain that this is now primarily a political position, not a religious one. This is also, broadly speaking, an elected office, which means that the people would vote for a candidate whom they consider to be suitable. It might have been natural in earlier times to assign the office of head of state and government only to Muslims, but modern constitutions usually regulate this matter in the light of the prevailing realities of each community, which would imply that no prior stipulations are called for.[39] In my own view, public opinion in many present-day majority Muslim countries of the Arab world and Asia would hesitate to support the idea of a non-Muslim head of state, although one may be able to see a different prospect in Muslim countries with sizeable non-Muslim minorities.

1. Franchise

The citizen is entitled to participate in the election of the head of state and other representative government bodies. Ibn Qudama recorded the majority position here when he wrote: "Whoever that Muslims agree upon as their leader and *Imām* and pledge their oath of allegiance (*bay'a*) to is designated as *Imām* and must be assisted and obeyed (by everyone)."[40] The *Imām* is elected into office in two stages, one of which is nomination (*tarshīḥ*), and the other the pledging of allegiance (*mubāya'a*). A person may be nominated for leadership by a college of electors known as the *ahl al-ḥall wa-al-'aqd* (those who loose and bind), or by the outgoing *Imām*. This latter procedure is known as *istikhlāf* (also *al-'ahd*). Both of these methods were applied in the designation of the first four (Rightly-Guided) Caliphs (*al-khulafā' al-rāshidūn*). It is the *bay'a* of the community at large, i.e., their vote, that completes and brings to fruition the initial nomination of the *ahl al-ḥall wa-al-'aqd*. In other words, nomination alone, if it is not followed by *bay'a*, is of no consequence in the designation of the head of state into office.[41]

The citizen's right to *bay'a* is rooted in the Qur'anic principle of consultation, which entitles the community to the management of its own affairs (Q 42:38). Election of the head of state is undoubtedly an important matter that concerns the entire community. Consultation must therefore be assigned its proper place in the general election and *bay'a*, in which all members of the community are expected to participate.

---

[38]Cf. Ayyād Ibn 'Ashūr, *Al-amīr wa-al-tashrī', al-'Aqliyya al-Madaniyya wa'l-Huqūq al-Hadītha* (al-Markaz al-Thaqafī al-'Arabī, Casablanca 1998), pp. 138-139.

[39]Cf. al-Affandi (n 9) 150.

[40]Muwaffaq al-Dīn Abu Muḥammad 'Abd Allāh Ibn Qudāma, *Al-Mughnī*, vol. 7 (Matba'at al-Manar, Cairo 1367 A.H.) 106.

[41]'Abd al-Razzaq Al-Sanhūrī, *Fiqh al-khilāfa wa taṭawwuruh,* eds. Nadia al-Sanhuri and Tawfiq Muhammad al-Shawi, vol. 8 (Al-Hay'at al-Misriyya li'l-Kitāb, Cairo 1989) 139; Muhammad Salam Madkūr, *Ma'ālim al-dawla al-Islāmiyyah* (Maktabat al-Falah, Kuwait 1403/(1983) 242; Samīr Qad 'Aliya, *Naẓariyyat al-dawla wa ādābuha fi'l-Islām* (al-Mu'assasa al-Jami'iyya, Beirut 1402/1988) 47.

The Qur'an encourages the community's active participation in its own government. This is understood from the numerous verses addressed directly to the community of believers. Being the direct audience of the revelation, as is clear, for example, in the familiar Qur'anic phrase *yā ayyuhā lladhīna āmanū* ("O you who believe"), the Muslim community is entrusted with the responsibility of implementing the Shari'a.[42]

Since the community cannot always discharge its responsibility directly, it has powers to appoint representatives to act on its behalf. The head of state is thus a representative (*wakīl*) of the community, elected and entrusted to administer its affairs in accordance with the Shari'a.[43] As for the method in which the community organizes elections, whether direct or indirect (i.e., through a college of electors) or a combination of both, this is a matter that may be determined through consultation. Since election is a right of the community, it is for the community to determine the method of exercising that right. The Qur'anic statement: "their affairs are a matter of consultation between them" (Q 42:38) is a clear text on direct participation. There is, however, authority for indirect elections in the precedent of the Rightly-Guided. The first Caliph, Abu Bakr was elected by nomination and *bay'a* of the people of Medina, in which the rest of the community did not participate directly, but there has been no objection to the manner in which he was elected. This may be seen, if translated into modern terms, as equivalent to indirect election.[44]

Instances of indirect elections are found in the constitutions of some present-day Muslim countries, such as Indonesia, whereby the head of state is elected by a combined session of parliament and other representative bodies. As of 2004, Indonesia's President is elected through separate elections directly by the electorate. There are hardly any instances of local, municipal, or even parliamentary elections to be found in the precedents provided by the dynastic rulers of earlier times. It is therefore assumed that the basic principle of representation, consultation and election that the jurists have stated in regard to the designation of the *Imām* also applies, *mutatis mutandis*, to the election of other officers and representative organs of government. It seems desirable and in harmony with Qur'anic guidance to widen the scope of consultation in political matters as effectively as possible.

Traditionally, only Muslim citizens participated in *bay'a* concerning the election of the head of state, in line with the prevailing view among the early jurists and also due to the fact that non-Muslims did not participate in the election of any of the Rightly-Guided Caliphs. A rule of convention thus came into being to allow only Muslims a vote in the election of the head of state. Notwithstanding this, 'Abd al-Karim Zaydan has observed, and rightly so, that in the present circumstances, non-Muslim citizens may participate in the election of the head of state, just as they are permitted generally to participate in the affairs of government and its representative organs. They are accordingly entitled to be nominated for membership of the representative assemblies and also have the right to vote. They may also initiate an opinion in political matters, offer advice to the government and make complaints on behalf of the electorate. Hence there is no objection to the participation of non-Muslim citizens in the election of the head of state, or to their membership of and election to

[42]'Abd al Karīm Zaydān, *Al-farḍ wa-al-dawla fī al-sharī'a al-islāmiyya* (al-Ittiḥād al-'Alamī li'l-Munazzamāt al-Ṭullābiyya, Indiana 1372/1952) 23–25.
[43]Cf. Abū'l-Ḥasan Al-Māwardī, *al-Aḥkām al-Ṣulṭāniyyah* (2nd edn., Muṣṭafa al-Babi al-Halabi, Cairo 1386) 29; Zaydā (n 42) 27.
[44]Zaydān (n 42) 30.

representative assemblies.[45] Al-Ghanoushi has discussed Zaydan's views on this and expressed unqualified support for them.[46] Sa'id Ramadan has likewise upheld the "right of non-Muslim subjects to both voting and membership of the parliament".[47] Ramadan adds that the legislative powers of the Muslim parliament should be subservient to the injunctions of Islamic law, in which non-Muslim members may or may not believe. "This problem could be resolved," says Ramadan, "by stipulating in the constitution to make it *ultra vires* of the parliament to enact any law which is repugnant to the Qur'ān and Sunnah."[48]

2. Right to nomination (ḥaqq al-tarshīḥ)

There is evidence in the Sunna to suggest that the individual, whether Muslim or otherwise, may not nominate himself for public office. Self-canvassing is, in other words, discouraged. It is accordingly reported that the Prophet instructed 'Abd al-Rahman b. Samura: يا عبد الرحمن بن سمرة: لا تسأل الإمارة فإن أعطيتها عن مسألة وكلت إليها، وإن أعطيتها عن غير مسألة أعنت عليها ("You may not ask for government office (*imārah*): If you are given it at your request it will amount to (a contract of) agency but if you are given it without your asking, you would be given assistance over it").[49]

It is reported in another hadith that Abū Dhar al-Ghaffārī asked the Prophet if he could be appointed to a government post, to which the Prophet responded: يا أبا ذر إنك ضعيف، إنها أمانة وإنها يوم القيامة خزي وندامة إلا من أخذها بحقها وأدى الذى عليه فيها ("O Abū Dhar, you are weak; this is a trust [position of responsibility] and [brings nothing but] accountability and regret on the Day of Judgment, except for those who take it rightly and duly discharge the duty they have undertaken").[50] This does not, of course, apply to nomination of one person by another person or a group of persons. For nomination by others implies invitation by the community and assurance over the competence of the person for the task.

Modern writers have held, however, that, due to the change of circumstances, it may be difficult to locate suitable candidates for public office if they do not come forward to declare themselves. The instruction conveyed in the above hadith may thus be seen as a temporary legislation (*tashri' zamānī*) which was suitable at the time it was given but may not be in harmony with the lawful *maṣlaḥah* of the community now. Zaydan has even gone so far as to say that self-candidacy on the part of a competent individual under the present conditions is an act of merit, as it helps the community to make the right choice in the selection of officials.[51] Further to substantiate this view, Zaydan has referred to the Qur'anic example in which the Prophet

[45] 'Abd al-Karīm Zaydān, *Aḥkām ahl al-dhimma wa-al-musta'minīn fi Dār al-Islām* (Maktabat al-Quds, Baghdad, 1963). 83–84.
[46] Al-Ghanoushi (n 31) 84.
[47] Ramadan (n 24) 145.
[48] Ibid.
[49] Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, trans. Muḥsin Khān vol. 9, 195, hadith 261; Tariq al-Dīn Aḥmad Ibn Taymiyya, *Al-siyāsa al-shar'iyya fī iṣlāḥ al-rā'ī wa-al-ra'iyya* ed. 'Abd al-Rahmān b. Qāsim (Mu'assasāt al-Risāla, Beirut 1398 A.H.) 6.
[50] Muslim, '*Ṣaḥīḥ Muslim*: K. Al-Amara b. Karāhiyyah al-Imārah bi-ghayr ṣarūrah' in Muhammad Nasir al-Din al-Albani (ed.) *Mukhtaṣar Ṣahīh Muslim* (Dār al-Maktab al-Islāmi, Beirut 1404/1984).
[51] Zaydān (n 42) 53; see also 'Abd al-Ḥamīd Mutawallī, *Mabādi' niẓām al-ḥukm* fī'l-Islām (Mansha'at al-Ma'arif, Alexandria 1974) 43. Mutawallī also refers to al-Maududi's view in support of his own.

Joseph is quoted: قال اجعلنى على خزائن الأرض ، إني حفيظ عليم ("Place me (in authority) over the treasures of the land; surely I am a good and knowledgeable keeper") (Q 12:55).

Al-Mawardi has held that the *dhimmīs* may hold the post of minister (i.e., *wazīr al-tanfīdh*), but that the post of prime minister (*wazīr al-tafwīḍ*) and that of the *Imām* must be reserved for Muslims only. More recently, many Muslim scholars, including al-Nabhani, Muhammad Hamidullah, Ahmad Yusri and al-Ghanoushi, have spoken in support of the participation, candidacy and nomination of non-Muslims in consultative assemblies. In this connection, al- Ghanoushi has also referred to the provisions of the constitution of the Islamic Republic of Iran, which has reserved a number of seats in the Majlis for Jewish and Zoroastrian citizens of Iran.[52] The matter thus remains open to *ijtihād* and consultative decision-making by the community to determine the best manner in which non-Muslim citizens can participate in government at all levels, especially in areas where they can represent and serve their own respective communities best.

Muhammad al-Ghazali wrote that the basic guideline of Shari'a in respect of the rights and obligations of non-Muslim citizens is that "they have rights and obligations similar to our rights and our obligations". When a non-Muslim, Jew or Christian, becomes the citizen of a Muslim state, he becomes "a Muslim from the political and citizenship viewpoints – having the same rights and obligations as we have", although retaining his own identity in personal matters and religion. The basic principle in the sphere of social relations is participation and involvement. This is especially so in the area of economic activity and employment. There is no objection, therefore, to a Muslim being employed by *Ahl al-kitāb* ("People of the Book", a term used to refer to Jews and Christians, among others), or to the latter being employed by Muslims. The appointment of Jews and Christians to the high positions and lower government posts has, in one way or another, been widespread in Muslim countries in both early and modern times.[53]

Al-Ghazali also noted that Islam recognizes Christianity and Judaism as valid religions and its perspective toward the followers of these faiths is also not premised on fanaticism. The Qur'anic verses that advised Muslims against friendship with Jews, Christians and unbelievers were all revealed concerning "the aggressors against Islam and belligerent *muḥāribīn* toward Muslims" with the purpose of protecting the Muslim community from the mischief of the hypocrites (*munāfiqūn*) who helped certain groups among the *Ahl al-kitāb* in security matters that threatened life. Muslims were consequently ordered not to befriend them.[54]

With reference to the employment of non-Muslim citizens in public services, al-Qaradawi wrote in a 1977 publication that "*ahl al-dhimma* are entitled to be employed in government positions, as are Muslims", except for certain religious posts such as that of the head of state, commander of the army, judge with jurisdiction over Muslims and administrator of religious charities. Al-Qaradawi explains this by saying that the Imamate, that is, the office of the head of state, combines both religious and secular duties and includes "successorship to the Prophet, peace be on him". Army leadership is also not purely secular as it involves *jihād* which is an act of worship (*'ibāda*), and

[52]Al-Ghanoushi (n 31) 80; Aḥmad Yusrī, *Ḥuqūq al-insān wa Asbāb Al-'Unf fi'l-Mujtama' al-Islāmī Fi Ḍaw' al-Aḥkām al-sharī'ah* (Mansha'at al-Maarif, Alexandria 1993) 148.
[53]Shaykh Muḥammad Ghazālī, *Al-ta'aṣṣub wa-al-tasāmuḥ Bayn al-Masīḥiyyah wa'l-Islām* (Dar Kutub Haditha, Cairo 1960) 72.
[54]Ibid. 40.

so is being a judge, which involves enforcement of the rulings of Shari'a, and a non-Muslim is not required to issue judgment on the basis of something he does not believe in. In saying this al-Qaradawi also referred to what al-Mawardi wrote so long ago on the distinction between the two types of vizierates, namely, *wizārat al-tafwīḍ*, the mandatory, and *wizārat al-tanfīdh*, the executive. A *dhimmī* may be appointed to the latter but not to the former.[55]

Most other commentators including Fathi Osman, al-Ghazali, al-'Awa and Fahmi Huwaydi, among others, do not specify these limitations on employment. This is partly due to the fact that the institutions of modern government are bound by laws and procedures which seek propriety and fairness. There are also constitutional limitations on state powers which must be observed by the individuals in charge, be they Muslim or non-Muslim. I also concur with the view many of these commentators have advocated that equality, integration and fair treatment of all citizens is the preferable approach, one that realizes the public interest and *maṣlaḥa* of the people, in pursuit of greater harmony and unity of purpose among them.

In his 1977 publication in Egypt,[56] Fathi Osman called for clear and unambiguous legislation on the rights and duties of non-Muslim citizens in Muslim territories where the Shari'a applies. He posed the question: is it at all clear whether total equality among all citizens is the accepted norm, and whether non-Muslims are to be treated equally under the law? Osman similarly raised the question of whether the law permitted non-Muslims to be members of parliament, ministers, judges, army commanders, and the like, and what are the rights of non-Muslims in respect of building new places of worship? These and other similar questions have arisen before, but the responses given have not been devoid of ambiguity. What is now needed, Fathi Osman urges, is to depart from the language of ambiguity and take a clear stand on issues in such a way that would help build a climate of understanding and confidence in the community.

The need for clarity becomes all the more evident in view of the confusion that the non-Muslims of Egypt have experienced. Osman added: "It is a right of these non-Muslim *muwāṭin*s [compatriots, citizens] to know their legal status and their rights so as to give them confidence over their future."[57] The *muwāṭin*s should also know their standing vis-à-vis the Shari'a with a degree of clarity so that they know the difference between its basic and decisive provisions and those which are interpretation-based and optional, as well as rules that are changeable with the change of circumstances. It is simply not helpful for them to be faced with a new constitutional clause that declares the Shari'a to be a source of legislation. Moreover, the issues involved were not entirely of a legal nature but included political and economic questions that needed to be addressed. To do this, it was necessary, Osman added, to set up a combined committee of scholars of Shari'a, non-Muslim religious leaders and prominent thinkers in various fields, who should investigate and then publish the results of their findings.[58]

---

[55]Yūsuf Qaraḍāwī, *Ghayr al-muslimīn fī al-mujtama' al-islāmī* (Maktaba Wahba, Cairo 1977) 23; also quoted in al-Bishrī (n 37) 33.
[56]Fathi Osman, *Majallat al-muslim al-mu'āṣir* II (July 1977)
[57]Ibid. 85–87; also discussed in al-Bishrī (n 37) 27.
[58]Ibid 87.

*3. Right to consultation (***shūrā***)*

Once the head of state is lawfully elected, he is under obligation to consult the community in government affairs. Thus it may be stated that after the right to vote, the second political right the citizen enjoys in an Islamic polity is to be consulted in the affairs of government. This is a collective right of the community which is to be exercised by those of its members who are competent to give advice and counsel. There is evidence in the Qur'an and Sunna on the subject of consultation, which need not be elaborated here. According to the author of *Tafsīr al-Qurṭubī*, in the event of the head of state refusing to fulfill this obligation and refusing to consult the community in government affairs, he may be deposed.[59] Ibn Taymiyya has also observed that the government in power and the *ūlū al-amr* (those with authority), indeed all Muslim rulers and officials must be diligent in consultation. For God Most High enjoined it upon His Messenger to consult the community, even though the Prophet was recipient of divine revelation. It is all the more advisable for the Muslim ruler to do the same.[60]

According to Rashid Rida, consultation is an emphatic duty of the Islamic government and thus a right of the citizen and the community as a whole. It should therefore be solicited in all matters of public concern that have not been regulated by decisive textual injunctions. The Prophet himself and the Rightly-Guided Caliphs after him were diligent in consulting the community, so it became a distinctive feature of Islamic government which must never be neglected.[61] Sayyid Qutb has concurred and added that no particular method need be followed, as the Shari'a does not specify any particular procedure for the implementation of *shūrā*. It is thus left for the community to devise suitable methods in the light of its prevailing conditions and public interest (*maṣlaḥa*).[62] As discussed earlier, the methods may require direct participation, such as consultation in local affairs, or may provide for representative assemblies. The community may determine them as they deem fit. It would also appear from this analysis that the consultative substance of the Islamic government and its organizational matters need to be addressed by the constitution. Some constitutional guidelines would, in other words, be necessary to specify the citizen's right to consultation and identify the institutional framework and methods by which this right may find its proper role and application in the various spheres of community affairs.

Non-Muslim citizens are also eligible to give advice and counsel when they are competent to do so and government leaders may solicit their counsel. This is the purport of the Qur'anic directive to the believers: فاسئلوا أهل الذكر إن كنتم لاتعلمون ("Ask those who have knowledge if you do not know (yourselves))" (Q 16:43). Commentators have stated that this verse was in fact revealed concerning the Jews and Christians and consequently permitted the Muslims to seek their advice and opinion. Recourse may thus be had to expert opinion in matters of a specialized nature and the expert opinion, whether given by Muslims or non-Muslims, may be followed. Non-Muslim citizens are also eligible for membership of the Consultative Assembly (*majlis al-shūrā*), especially in their capacity as representatives of their own communities, but also to

[59]Abū Abd Allah Muḥammad Al-Qurṭubī, *Tafsīr al-Qurṭubī*, vol. 4, (Maṭaba'a Dār al-Kutub, Cairo, 1387/1967) 250.
[60]Ibn Taymiyyah, *al-Siyāsah al-Shar^{c}iyyah*, p. 169.
[61]Muḥammad Rashīd Riḍā, *Al-khilāfa wa-al-imāma al-'uẓmā* (Matba'at al-Manar, Cairo 1341 A.H.) 30.
[62]Sayyid Quṭb, *Al-'adāla al-ijtimā'iyya fī al-islām* (4th edn. 'Isa al-Babi al-Halabi, Cairo 1373/1954) 99.

participate in the general deliberations of the Assembly. The only point of reservation that some commentators have recorded in this connection is that they may not initiate an opinion in matters that concern Islamic dogma and legislation on purely religious matters.[63]

4. Right to criticize

Islamic government is participatory and consultative. It sees an active role for citizens in all community affairs of concern to them, including government policy and administration. This is evident from the Qur'anic mandate of *ḥisbah*, that is, promotion of good and prohibition of evil (*al-amr bil-ma'rūf wa-al-nahy 'an al-munkar*), which is a broad yet a basic right not only of Muslim believers but of all citizens. For no one can be disallowed to promote a good cause or to put a stop to an evil one. The details of *ḥisba* need not be elaborated here. Suffice it to say that *ḥisba* is a prominent Qur'anic principle that entitles the citizen to express an opinion on the conduct of government. This may be said to be of concern also to *shūrā*, but since the right to *shūrā* is normally exercised when advice or counsel is solicited by the leaders and the *ūlū al-amr*, it may be subjected to some limitation in the event of the authorities taking the initiative to ask for it. The citizen's right to *ḥisba*, on the other hand, is an inherent right that does not depend on solicitation by the government. Yet it may be noted that at least one of the two aspects of *ḥisbah*, that is, *nahy 'an al-munkar* (prevention of evil), is limited to situations where the citizen is a direct witness of an evil that occurs before his or her eyes, which might also prove to be a limiting factor. When *ḥisba* and *shūrā* both fall short of enabling the citizen to express an opinion on political matters, he or she may resort to the parallel right to criticize the ruling authorities within the limits of propriety and public interest. This is known as *ḥurriyyat al-mu'āraḍa* (the freedom to object); some writers refer to it as *ḥurriyyat naqd al-ḥākim*, which is perhaps more specific as it literally means "the freedom to criticize the ruler".

"*Mu'āraḍa* is a fundamental principle of the Islamic system of government," writes 'Afīfī "which entitles the individual to tell the truth and expose transgression even when this entails exposing the ruling authorities".[64] The textual authority for this in the Qur'an and Sunna is the same as can be cited in support of *ḥisba*, which is the central theme of a number of verses in the Qur'an. *Mu'āraḍa* is also upheld in the Sunna of the Prophet and the precedent of the early caliphs. Thus it is provided in a hadith that أفضل الجهاد كلمة عدل عن سلطان جائر ("the best form of *jihād* is to speak a word of truth to a tyrannical ruler").[65]

It was in line with the basic message of this hadith when the first Caliph Abu Bakr addressed the people in his inaugural speech upon taking office in the following terms: "O people, I have been entrusted with authority over you, but I am not the best of you. Assist me if I am right and rectify me when I am wrong."[66] Abu Bakr's successor,

---

[63]Cf. Mahmud 'Abd al-Majid Al-Khālidī, *Niẓām al-ḥukm fī'al-islām* (Dār al-Buhūth, Kuwait 1400/1980) 185.

[64]Muḥammad Ṣādiq 'Afīfī, *Al-mujtama' al-Islamī wa Huqūq al-Insān* (Idārat al-Ṣaḥāfa wa'l-Nashr bi-Rābitat al-'Alam al-Islāmi, Cairo 1407/1987) 93. See also Muṣṭafa al-Sibā'ī, *Ishtirākiyya Ishtirākiyyat al-Islām* (al-Dār al-Qawmiyya li'l-Ṭibā'a wa'l-Nashr, Damascus 1379/1960) 50.

[65]Ibn Māja, *Sunan, Kitāb al-fitan, bi bāb amr bi-al-ma'rūf wa-nahy 'an al-munkar*. (Cagli Yayinlari, Istanbul 1401/1981)

[66]'Abd al-Malik Ibn Hishām, *Sīra*, (Mustafa al-Babi al Halabi, Cairo 1936) 262.

Umar ibn al-Khattab, also asked the people in his inaugural speech to "rectify any aberration" they might see in him.[67]

The citizen is thus entitled to speak out against transgression and criticise the authorities from a position of conviction and in the true spirit of sincere advice or *naṣīḥa*. The criticism must be based on truth; it should be courteous and suitable to the occasion in that it is neither excessive nor ineffective and feeble.[68]

Both Maududi and al-Ghanoushi have spoken in support of freedom of opinion, expression, and association for non-Muslim citizens in government affairs in the same way as is recognized for their Muslim fellow citizens. If there are limitations on the exercise of these rights, they apply equally to the Muslim and non-Muslim citizens; both are expected to observe the limits of the law and, within those limits, there are no special disadvantages nor privileges for either.[69]

5. The right to disobey the deviant ruler

The citizen is normally under a duty to obey and assist the lawful authorities, but only when the latter themselves do not violate the law. The duty of obedience thus collapses when obeying a command amounts to a clear transgression. In all other instances of lesser violation and also occasions when the citizen doubts the legality of a command issued by the lawful government, his or her duty of obedience is not affected, but he or she may voice an opinion through normal methods. The principle here is established in the authority both of the Qur'an and Sunna. The Qur'an demands obedience to the lawful government: فردوه إلى الله يآيها الذين آمنوا أطيعوا الله وأطيعوا الرسول وأولى والرسول إن كنتم تؤمنون بالله واليوم الآخر. الأمر منكم فإن تنازعتم فى شيئ ("O you who believe, obey God and obey the Messenger and those who are in charge of the affairs among you. If you dispute over a matter refer it to God and to the Messenger, if you believe in God …") (Q 4:59).

The citizen must therefore obey the government provided that the latter conforms to the injunctions of the Qur'an and Sunna. This text has given rise to much elaboration from commentators in that it lays down a number of important principles.[70] We shall here refer only to some of the basic directives on the subject of obedience, which need to be read together with the verse above. Thus it is provided in another Qur'anic verse that not everyone in position of power is entitled to obedience: أمره فرطا ولاتطع من أغفلنا قلبه عن ذكرنا واتبع هواه وكان ("And obey not a person whose heart We have permitted to become negligent of Our remembrance, one who is following the dictates of his own desire, and whose case has gone beyond all bounds") (Q 18:28).

It is further provided in a hadith: فلاسمع السمع والطاعة على المرء المسلم فيما أحب وكره ولاطاعة مالم يؤمر بمعصية ، فإذاأمر بمعصية ("A Muslim is under duty to listen and to obey

[67]Muhammad Al-Khuḍarī, *Muḥāḍarāt fi Tārīkh al-Umar al-Islamiyya* (al-Maktaba al-Tijariyya, Cairo 1370/1969) 17; Abū Ḥabīb Sa'di, *Dirāsa fi Minhāj al-Islām al-Siyāsi* (Mu'assasa al-Risāla, Beirut 1406/1985) p. 743.

[68]For further details see Kamali, *Freedom of Expression in Islam* (The Islamic Texts Society, Cambridge 1997) 54ff.

[69]S. Abū al-A'lā al-Mawdūdī, *Naẓariyyat al-islām wa-hadyuh* (Dar al-Fikr, Cairo 1969) 307; al-Ghanoushi, (n 31) 73.

[70]See for discussion of this, Muhammad Asad, *Principles of State and Government in Islam* (University of California Press, Berkeley 1966) 75; and Said Ramadan, *Islamic Law: Its Scope and Equity*, 143.

in what he likes or dislikes unless he is commanded to commit a transgression. When he is so commanded, he is not required to listen or to obey.")[71]

The same message is conveyed in two other hadiths, one of which simply declares: لاطاعة لمخلوق فى معصية الخالق ("There is no obedience to a creature in disobedience of the Creator")[72] and the other: لاطاعة فى معصية, إنما الطاعة في المعروف. "No obedience is due in sin, behold, obedience is due only in righteousness."[73]

Some of the implications of these declarations will be discussed below in the context of the duties of citizens. It should suffice here to note briefly that an unlawful command may be disobeyed only when it is explicitly and self-evidently unlawful and its unlawfulness is not based on individual understanding and interpretation. Al-Siba'i has summed up the substance of these directives: "Put in contemporary parlance, the message here would be that a government order is not enforceable when it violates the constitution and other laws."[74]

The Shari'a takes a direct approach to the principle of individual responsibility in that anyone who follows a command which is against the clear injunctions of Shari'a shall have no excuse and will be held accountable for it himself. The Qur'an has thus clearly denounced as feeble excuses the pleas of those who persisted in transgression and blame their ancestors and superiors for it: ربنا آتهم ضعفين من العذاب والعنهم لعنا كبيرا . وقالوا ربنا إنا أطعنا سادتنا وكبراءنا فأضلونا السبيلا، ("And they say: Our Lord, we only obeyed our leaders and our great men, so they led us astray from (the true) the path. Our Lord, give them a double chastisement and curse them with a great curse") (Q 33:67–68). This is confirmed in another verse: وقال الذين اتبعوا لو أن لنا كرّة فنتبرأ منهم كما تبرءوا منا ، كذلك يريهم الله أعمالهم حسرات عليهم. ("And those who followed [others in transgression] will say: if we could only return, we would renounce them as they renounced us. Thus will God show them [the result of] their deeds …") (Q 2:167).

The textual evidence reviewed above leads to the conclusion that one who knowingly obeys an unlawful command is personally responsible and guilty of unlawful obedience (*al-ṭā'a al-muḥarrama*). He or she is also responsible for its consequences and may also be punished for it. The only avenue by which such a person can be relieved of punitive consequences would be for him or her to show that the command in question was carried out under duress (*ikrāh*), which could not be avoided.[75]

6. Right to basic necessities

I shall not elaborate much on this as I have addressed the subject elsewhere in a separate work.[76] It may briefly be stated here that Islam entitles citizens to the provision of the basic necessities of life without any distinction of caste or creed.[77] The legal alms-giving (*zakāh*), which is a Qur'anic duty and one of the five pillars of Islam, was

[71]Hadith reported by five of the six main collections. Cf. al-Bukhārī (n 49) vol. 9, 193, hadith 258.
[72]'Abd Allah al-Khatib Tabrīzī, *Mishkāt Mishkāt al-Maṣābiḥ*, ed. Muhammad Nasir al-Din al-Albani, vol. 2 (2nd ed., Al-Maktab al-Islāmī, Beirut 1399/1977) vol. 2, hadith 3696.
[73]Ibid. hadith 3665.
[74]Al-Sibā'ī (n 54) 51.
[75]Cf. Zaydān (n 42) 96.
[76]Mohammad Hashim Kamali, *Rights to Education, Work and Welfare in Islam* (forthcoming).
[77]Cf. Abu l-A'la al-Maududi, *The Islamic Law and Constitution* (Islamic Publications Ltd., Lahore, reprint 1979) 250.

made compulsory for Muslims for this very purpose. The Qur'an also speaks unequivocally of the basic right of the poor to share in the wealth of the affluent (Q 70:25) and promises distinction to those who ويطعمون الطعام على حبه مسكينا ويتيماوأسيرا ("feed for the love of God the indigent, the orphan and the captive") (Q 76:8).

Reports, incidentally, suggest that this latter passage was revealed at a time when the captives and prisoners of war in Medina were all non-Muslims.[78] To ensure a decent living for the people and fulfil their needs is also considered to be in the nature of *al-amr bi-al-ma'rūf wa-al-nahy 'an al-munkar*, that is promoting good and preventing evil, which is firmly rooted in the Qur'an and is in so many ways characteristic of Islam itself.[79]

The Sunna has taken the Qur'anic guidance a step further to enunciate assistance to the poor and needy as a principal duty of the government. Thus it is provided: فالسلطان ولي من لاوليّ له. ("The government is the guardian (helper) of one who has no guardian").[80] And again: فمن توفي وعليه دين فعلي قضاؤه، ومن ترك مالا فلورثته. ("Whoever leaves behind property, it shall belong to his heirs, but whoever leaves a debt or dependants in need, they shall be my responsibility").[81] The Prophet is also reported to have said: وفقره دون حاجتهم؛ خلقهم وفقرهم احتجب الله عنه دون من ولاه الله عز وجل شيئا من أمر المسلمين فاحتجب حاجته وخلقه ("He whom God has made an administrator over the affairs of Muslims but remains indifferent to their needs and their poverty, God will also be indifferent to his needs and poverty on the Day of Judgment").[82]

The Caliphs Abu Bakr and 'Umar ibn al-Khattab are reported to have disagreed concerning the entitlement to equal assistance of the citizens from the public funds of the *bayt al-māl* (public treasury). Whereas Abu Bakr gave everyone entitlement to an equal share without any distinction on the basis of their seniority or service to Islam, Umar took these factors into consideration. Abu Bakr considered equal treatment as a basic guideline for government policy, leaving the differences in piety and service to Islam a matter between man and his Creator.

During the two years of his rule (June 632 to August 634 AD) the Caliph Abu Bakr fought the wars of apostasy against the refusers of *zakāh*, on which occasion the Caliph decided to distribute the war booty equally among the Muslims, regardless of how early they had converted to Islam, their kinship ties with the Prophet, or their bravery in championing the cause of Islam. This manner of treatment is reported to have encouraged many Arabs to join the Muslim army. Abu Bakr divided the booty equally among the warriors and assigned to the state treasury the one-fifth portion that was formerly given to the Prophet.[83]

The right to basic necessities subsumes the right to employment and assistance to find a suitable occupation, especially for those who are able to work. This is because the Shari'a does not entitle an able-bodied man to support if he does not apply himself in order to earn his living. The only right that such a person has is to be provided with

[78]Al-Qaraḍāwī (n 55) 45.
[79]Cf. 'Abd al-Hakim Hasan Al-'Ili, *Al-Ḥurriyat al-Amma fi'l-Fikr wa'l-Niẓām al-Siyāsī al Islāmī* (Dār al-Kitāb al-Hadīth, Kuwait 1413/1983) 494; Fu'ād 'Abd al-Mun'im Aḥmad, *Uṣūl niẓām al-ḥukm fī'l-Islām* (Mu'assasah Shabab al-Jami'a, Alexandria, Egypt 1411/1991) 286.
[80]Abū Dāwūd, 'Kitāb al-nikāḥ, bāb al-walī' in Mustafa Dib al-Bugha (ed), *Sunan Abū Dāwūd* (Dār al-'Ulum al-Insāniyya, Damascus 1416/1995).
[81]Muslim, *Mukhtaṣar Ṣaḥīḥ Muslim*, 263, hadith 999.
[82]Abū Dāwūd 'Kitāb al-kharāj wa-al-fay', bāb fī mā yalzam al-imām min amr al-ra'iyya,' *Sunan Abū Dāwūd.*
[83]Manna (n 3) 38.

an employment opportunity, or the basic means that enables him to work. This may mean purchase of equipment, a loan, or a small investment that facilitates engagement in productive work.[84] The fourth Caliph, ‘Ali, has been quoted as saying in this connection that poverty and affluence make all the difference to one’s belonging to a homeland (*waṭan*): “Affluence, even if it is away from one’s homeland, turns that place into a homeland, and poverty in one’s homeland (can easily) turn one into a stranger.”[85]

When ‘Umar became Caliph, he introduced a system of benefits and pensions as well as an army register (*dīwān*), which was used as a basis for the determination of benefits. ‘Umar’s system of distribution took certain factors into account: those who had embraced Islam before the conquest of Mecca were favored over those who converted afterwards. Service to Islam and affinity to the Prophet were also considered: ᶜUmar has thus been quoted to have said that he could not treat equally those who fought with the Prophet and those who fought against him.

A side effect of instituting the *dīwān* for army and pensions register might have been the concretization of some of these divisions. Divisions based on blood ties were clearly recognized. Three genealogists are reported to have been appointed to establish a hierarchy of pensions in basically two categories, one general and one particular. In the general category, the Arabs were divided into tribes and clans and their members were identified. The criteria applied in the particular category were early conversions to Islam, distinguished service to Islam and age and affinity to the Prophet. People were thus classified into ‘old’ citizens and the ‘new’ citizens, both ranking higher than non-Muslims.[86]

Muslim armies, camps, new cities and the army registers were organized along tribal lines, a factor that was reflected in turn in the relationship with non-Arab Muslims who accepted to become protected subjects (*mawālī*). This also meant another form of inter-Muslim differentiation. The population within Muslim society before ‘Umar’s death was thus classified into: Muslims who were *Muhājirūn*, Muslims who were *Anṣār*, Meccan Muslims, Arab Muslims in general, non-Arab Muslims (*mawālī*), People of the Book (Jews and Christians), and those belonging to other creeds.[87] Commentators seem to be divided on the merits and demerits of these early distinctions and I do not propose to enter into further detail. From the viewpoint of the material aspects of citizen’s entitlement to welfare assistance, these developments did not change the basic principles which even the Caliph ‘Umar himself had recognized.

All citizens of an Islamic state are thus entitled to the basic necessities of life from the public treasury, and it must strive to provide those needs to the extent of its capability. In the event that the public treasury runs out of funds, the state may impose additional taxes on the rich in order to provide the poor with the basic necessities and it becomes the duty of the rich to give.[88]

---

[84]Cf. al-Saffār, (n 11) 25.
[85]Ibn Abī al-Ḥadīd, *Sharḥ nahj al-balāgha* (Dar Ihya’ Turath al-‘Arabi, Beirut n.d.) section 56; see also al-Saffār, (n 11) 25.
[86]Cf. Manna (n 3) 38–39.
[87]Manna (n 3) 39.
[88]Abū ‘Abd Allāh Muḥammad al-Qurṭubī, *Al-jāmi‘ li-aḥkām al-Qur’ān* (also known as *Tafsīr al-Qurṭubī*), vol, 2, 223; Muhammad b. ‘Ali b. Ahmad b. Said Ibn Ḥazm al-Zāhirī, *Al-muḥallā* ed. Ahmad Muhammad Shakir, vol. 3 (Matba’a al-Nahda, Cairo 1347 A.H.), 560.

It is certainly remarkable to note in this connection the report that, towards the end of his ten years in office, the Caliph ‘Umar Ibn al-Khattab had to make a special effort to find poor people to receive the *zakāh*. Later, during the reign of the Caliph ‘Umar b. ‘Abd al-‘Aziz (99–101 AH), it is reported that his officer in charge of *zakāh* in Africa informed him that the public treasury (*bayt al-māl*) remained in surplus, but there were no poor people in Africa that needed support. The Caliph then ordered him to relieve the debtors of their debts, and this was done until there were no more debtors, and when the Caliph was informed that there were still funds available, he ordered that they should be used for buying slaves and setting them free.[89]

X. Duties of citizens

Textbook writers on government and caliphate have spoken of two principal duties of the citizen namely obedience (*ṭā ‘a*), and assistance (*naṣara*), both of which are primarily political and relate to trust and loyalty between the ruler and ruled. Obedience alone can be non-committal and passive, but rendering assistance and support requires active involvement and good will:

(1) *Obedience* (ṭā‘a)

Obedience to the lawful government and *ūlū al-amr* is a Qur’anic duty (Q 4:59) and a religious obligation which is primarily addressed to the believers. The hadiths on the subject of (*ṭā ‘a*), some of which we have already reviewed, are also conveyed in a language that takes the Muslims as its principal audience. The substance of this obligation is extended by analogy to non-Muslim citizens in all civic matters that do not compromise their freedom to adhere to the religion of their choice. The analogy that is drawn between Muslims and non-Muslims in respect of obedience to the government remains valid to this day and is in harmony with the constitutional norm of equality that is now generally upheld under the constitutions and laws of Muslim countries. The *Imām* and the *ūlū al-amr* who are elected by universal franchise and the *bay‘a* of the citizens, both Muslims and non-Muslims, are consequently entitled to the citizens’ obedience.[90] The basic evidence of the Qur’an and Sunna on obedience has already been reviewed and it will suffice merely to give some of the main points that are derived from that evidence. These are as follows:

(a) Being a duty of the citizen, obedience is expected in all lawful matters. This is understood from the clear terms of the hadith referred to above, which requires obedience to the leader regardless of one’s personal inclination, liking or disliking of the one to whom it is directed. The only qualification to be noted is that the person in question must be in possession of his faculties and there be no lawful impediment to exonerate him from the duty of obedience.[91]
(b) When the government issues a law or command which would amount to a clear violation or sin under the Shari‘a, the citizen is not under a duty to obey

[89]Cf. Muḥammad Abū Zahra, *Tanẓim al-Islām li’ l Mujtama’* (Dār al-Fikr al-‘Arabi, Cairo 1385/1965) 187; al-‘Alī, *Ḥurriyyāt*, 500.
[90]Cf. Al-Zuhaylī, *Al-fiqh al-islāmī* vol. 6 *wa Adillatuh* (Dar al-Fikr, Damascus) 707.
[91]Cf. al-Bukhārī, *Ṣaḥīḥ*, vol. 9, hadith 258; al-Zuhaylī (n 90) vol. 6, 707; Asad, *Principles of State* (n 69) 79.

it. The violation in question must, however, be self-evident and certain and not a result of interpretation or juristic *ijtihād*.[92]

(c) If the government sets itself openly and deliberately against the clear text of the Qur'an and commits a flagrant transgression, it becomes guilty of infidelity, whereupon it loses the right to rule and may be deposed by all those who pledged allegiance to it.

(d) In situations other than a clear declaration of unbelief (*kufr*) and renunciation of Islam, defiance of lawful authority must never be brought about by armed rebellion on the part of a minority within the community. For the Prophet has warned: من حمل علينا السلاح فليس منا ("He who raises arms against us ceases to be one of us").[93] Another hadith conveying the same message has it: "He who unleashes his sword against us ceases to be one of us."[94]

Both of these hadiths are concerned with rebels and mutineers who challenge the authority of the lawful government without a valid cause.[95] Further detail on the community's right to depose a government that is guilty of a clear violation of the Shari'a are discussed below under accountability and impeachment. It may be noted in passing, however, that no such clear case of deposition of the ruler on grounds of *kufr* has been recorded in the history of Islamic government, although failed attempts at mutiny and rebellion, linked with charges of transgression and even *kufr* against government have been frequently encountered.

(2) The citizen's duty to assist the lawful government is not altogether a formal requirement but one that is inspired by loyalty and affection on the part of the populace. This is also to a large extent a matter of propriety and uprightness of leadership and its dedication to the service of the community. Since the citizen pledges *bay'a* to the elected ruler, he or she is under the duty to assist and support him to the best of his or her ability. This may take a variety of forms depending on the role that a citizen can play and the extent to which he or she can assist the leaders. Civil servants and members of the army, or indeed those who are involved in development and welfare activities and enforcement, may all be able to assist the leaders in their own capacities. Muslim jurists have particularly emphasized two themes in relationship to *naṣara*, one of which is sincere advice (*naṣīḥa*) which the citizen should generously give, as a matter of his or her own initiative, in all matters that promote peace, affection, cooperation and good works for the benefit of the people. *Naṣīḥa* should be given in the most elegant and tactful manner.[96]

Basic authority for assistance (*naṣara*) is also found in the Qur'an where the text enjoins cooperation (*ta'āwun*) in good and beneficial works (Q 5:1). Although the Qur'anic text on *ta'āwun* applies to the ruler-and-ruled relationship, it is not confined to this context, as cooperation in good works is also required at all levels between the believers and indeed all citizens, within and outside the framework of government. The Constitution of Medina may be said to be the earliest authority on this. The Prophet admitted the Jews as full citizens of Medina and gave them entitlement to assistance and protection, just as they were required also to contribute to the expenditure incurred

[92]See for further details Asad, *Principles of State*, 76 ff.
[93]Muslim (n 81) p. 334, hadith 1235.
[94]Tabrīzī (n 72) vol. 2, hadith 3521.
[95]Al-Zuhaylī (n 90) vol. 6, 708.
[96]See for details on *naṣīḥa*, Kamali (n 68) 34–40.

for defence by the state of Medina. All the signatories of this document were thus required to assist the government and one another in pursuit of the stated objectives of defending Medina against outside aggression and to help with administering justice among its citizens.[97]

One aspect of cooperation that Islam specifies within the community is in the context of neighbourliness (*jiwār*), which is emphasized in the Qur'an and Sunna. There is much instruction in these sources on neighbourhood rights, which can be partly understood through the reading of the early history of Islam, especially in conjunction with the migration of the Prophet and his Companions to Medina. Those who came from Mecca to Medina, namely the *Muhājirūn* (migrants) took up residence in Medina basically as guests and neighbours of the Medinan Muslims, the *Anṣār* (helpers). Later, the Prophet added a new dimension to this by establishing the covenant of fraternity *(mu'ākhāt*) between the Migrants and Helpers. To refer to but one hadith on the subject: يؤمن بالله واليوم الآخر فلا يؤذ من كان يؤمن بالله واليوم الآخر فليقل خيرا أو ضيفه جاره، ومن—كان يؤمن بالله واليوم الآخر فليكرم ليصمت ومن كان ("Whoever believes in God and the Last Day, let him not annoy his neighbour; whoever believes in God and the Last Day, let him say something good or else remain silent; whoever believes in God and the Last Day, let him honour his guest").[98]

The relationship of *jiwār* went beyond the barriers of religion, especially with reference to the Muslims and Jews of Medina. Thus it is reported that when a servant of the renowned Companion Ibn 'Abbas slaughtered a sheep, Ibn 'Abbas told him to give some of the meat to their Jewish neighbour. Ibn 'Abbas repeated this more than once until the servant turned around and said to Ibn 'Abbas that he had said it several times, to which Ibn 'Abbas replied that this was due to the fact that the Prophet himself had emphasized the neighbour's rights so much that مازال جبريل يوصينى بالجار حتى ظننت أنه سيورثه ("we thought it was as if he was going to make him into an heir".[99]

Neighbours, whether Muslims or non-Muslims, are therefore entitled to the same rights and have the same obligation towards one another. This is especially relevant to the present-day context, where Muslims often find themselves living in pluralist societies side by side with people from other faiths and cultures, both as fellow citizens and as neighbours. Although the concept of neighbourliness is especially meaningful among fellow citizens, it is of wider application in that a neighbour may not even be a citizen, yet he or she is entitled to the same special treatment that Islam has required for all neighbours.

The next context in which assistance is required is participation in *ḥisba*, that is *al-amr bi-al-ma'rūf wa-al-nahy 'an al-munkar* (promotion of good and prevention of evil). This is a broad Qur'anic principle which, in its general outline and purpose, can relate to a variety of themes.[100] What needs to be specified here perhaps is that *ḥisbah* requires the citizen to be vigilant and alert in promoting beneficial objectives, peace and justice in the community The citizen is thus required to prevent, as far as he or she can, evil conduct, hostility and oppression wherever he or she sees it and whenever he or she is convinced that a certain initiative on his or her part, whether in words on in action, can prevent an imminent evil. When the citizen has taken that initiative and

[97]Cf. al-Saffār, (n 11) 21.
[98]Al-Bukārī (n 49) vol.8, 321, hadith 483.
[99]Ibid. 27, hadith 43; see also al-Saffār (n 11) 22.
[100]See for details on *ḥisba*, al-Saffār (n 11) 28–34.

acted or spoken in support of a good cause, he has fulfilled his civic and religious duty of giving assistance to the lawful government. By the same token, the citizen is under a duty to promote loyalty and affection toward the government and alert the latter of any immediate threat, attack, or act of treason that he or she might know about. Apart from the many Qur'anic verses and hadiths on *ḥisba*, the essence of *naṣara* is also conveyed in the following hadith: ألا كلكم راع، وكلكم مسؤول عن رعيته، فالأمام الذى جل راع على أهل بيته وهو مسؤول عن رعيته.... على الناس راع وهو مسؤول عن رعيته، والر ("Everyone of you is like a shepherd and everyone of you is responsible for what is under his custody. The *Imām* is a custodian and he is responsible for his subject, and a man is responsible for his family and what is in his custody, and every (married) woman is responsible for her husband's household and what is under her custody.")[101]

XI. Women and citizenship

The *fiqh* literature does not articulate the position of women regarding citizenship and the issue is consequently dealt with, almost entirely, under statutory legislation. Immigration and citizenship laws in most Muslim countries are, on the whole, based in their Western antecedents, which also fall short of treating women equally in respect of citizenship rights. A question thus arises of whether a woman can pass on her nationality and citizenship to her husband and child in the same way that the law entitles the husband and father to these privileges. The basic issue here is one of equality before the law, and the laws that currently prevail in most Muslim, as well as non-Muslim countries, do not offer equal citizenship rights to women. A woman under the prevailing law is not entitled to pass on citizenship to her child or to her husband.

Many commentators, including Selim al-'Awa and Muhammad Shahrur, have spoken critically of this and called for a reform of the personal status laws of the Arab and Islamic countries wherein it is urged that a woman should be entitled to confer citizenship on her alien husband as well as on her offspring. For as long as the law continues as it is without the necessary reform, according to Shahrur, "the male domination of the Arab societies will perpetuate itself and women will remain second class citizens."[102] Shahrur has also called for necessary legal reform that would entitle women to be nominated and elected to all government positions and to participate fully in the civic life of modern society. Selim al-'Awa has drawn attention to the underdeveloped state of *fiqh* on citizenship, especially with reference to women, and has himself attempted to discuss certain issues in the light of the textual guidelines of the Qur'an and the legal maxims of *fiqh*. I have referred to his work in the following paragraphs:

Looking at the issues from the Shari'a perspective, one would need to refer to the general norms of equality in the sources of Shari'a simply because the issue has not been specifically addressed in the *fiqh* literature. The following Qur'anic verses provide basic guidelines on equal rights for women:

> And they (women) have rights similar to those (of men) over them in kindness (or what is deemed equitable). (2:228)

[101] Al-Bukhārī, (n 49) vol. 9, 190, hadith 252.
[102] Muhammad Shahrūr, *Naḥwa uṣūl jadīda li-al-fiqh al-islāmī: fiqh al-mar'a* (al-Ahāli li'l-Ṭibā'a wa'l-Tawzī' wa'l-Nashr, Damascus, 2000) 382.

This is evidently a general declaration that entitles women to an equal regime of rights and obligations to those of men, particularly their husbands – as this is the immediate context of the verse – and other members of the community. Equality and similarity of rights and obligations to which men and women are entitled is the principal theme of this Qur'anic declaration, and citizenship is naturally no exception. The reference to considerations of equity and kindness (*bi-al-ma'rūf*) in this verse probably means that the Qur'an does not necessarily call for a mechanical regime of equality, but an equality that is fair and meaningful and in keeping with the spirit, if not the letter, of that approach.

The Qur'an also provides: للرجال نصيب مماكتسبوا وللنساء نصيب مما اكتسبن. ("Men are entitled to what they earn and women are entitled to what they earn") (Q 4:32). Although the reference to earning/acquisition (*al-kasb*) is commonly seen to be inclusive of all earnings, whether material or spiritual, what is not commonly seen, however, is that one's offspring are also a part of one's *kasb*, or what a person has acquired and begotten. If the father is entitled to the transfer of his nationality through the blood tie to his child, then the mother stands in precisely the same position and her blood tie to her offspring is at least as strong as that of the father. The mother should therefore be entitled to the same right in respect of citizenship. This is also Selim al-'Awa's reading of the verse under review. Statutory legislation in Muslim countries should therefore observe this and ensure equal treatment for women in the matter of citizenship.[103]

With reference to citizenship, the original ruling here entitles the father to pass on his nationality to his offspring. But if this becomes unfeasible for some reason, such as uncertainty or ignorance about the father's nationality or if the father happened to have no nationality, then a transfer is due to the nearest substitute, which would be to allow the mother's nationality be passed on to the child.[104]

XII. Conclusion and reform proposals

Citizenship is an evidently important and yet problematic area in the general scheme of fundamental rights and liberties. It has acquired greater significance since the advent of nation state in Europe and its eventual acceptance by Muslim countries. One of the problematics to note at the outset is that immigration and nationality laws that are now in force generally fail to address issues of citizenship in the spirit of harmony and cooperation among people. General custom, or '*urf*, which is a recognized proof in Islamic law, can now be said to have accepted the nation state, just as it has also been ratified by the constitutions and national charters of these countries. Yet neither in European thought nor in the works of Muslim jurists can one find a clear recognition of citizenship as a fundamental right in itself. This may be due partly to the fact that citizenship is not a monolithic concept, for it tends to comprise and subsume a number of other rights, such as the right to domicile, work, education, welfare, and so forth. Juristic discourse on fundamental rights and liberties has tended to address some of the rights that are conferred as a result of citizenship, but citizenship itself has not been identified as a basic right of the individual. Notwithstanding the fact that modern constitutions tend to provide guidelines on citizenship, they still fall short of recognizing it as a basic right as such. This may be due partly to the fact that, unlike the other

[103]Cf. Salīm al-'Awa, *Al-fiqh al-islāmī: fī tarīq al-tajdīd*, p. 90.
[104]Cf. ibid. 92.

areas of fundamental rights, such as ownership, work and education, which are recognized only for citizens, citizenship concerns aliens who are normally outside the jurisdiction of the national state and constitution. Citizenship is, in other words, a broad concept that subsumes other rights, and it concerns not only citizens but also aliens.

At the dawn of the twenty-first century, one can observe three phenomena that bring into question the basic notion of nation state and its historical significance. First, the crisis of the post-colonial states in the South; second, the disintegration of the Soviet Union and Yugoslavia; and third, the emergence of a supranational entity in the countries of the European Union. These three sets of facts are not always in harmony with one another, yet they all point to certain faultlines in the nation state idea and its failure to accommodate the desire for greater cooperation and unity among people.[105]

The anachronistic and sometimes discriminatory content of the nationality laws of our time call for reappraisal and adjustment in favour of a real linkage between "human rights" and "citizens rights", for it is doubtful whether a meaningful affinity of this kind can be established in the face of a continued adherence to the hollow notion of national sovereignty, over and above the emphatic humanitarian call of respect for human rights.

The distinction between the citizen and the non-citizen, the national and the alien, is the contemporary form of discrimination in rights between individuals within the borders of national states. What we witness today is a new era of exclusivist nationalism in Europe that expresses itself in local rhetoric and relies on ethnicity, culture and religion – which present a serious setback to human progress.

The present study has nevertheless assumed the validity, on an ad hoc basis at least, of the nation state as a substitute for the earlier notions of *dār al-Islām* and *dār al-ḥarb*, which seems historically to have dominated Islamic thought on the subject. But the assumption here has been invoked more by necessity than by choice, simply because the nation state formula itself is problematic as it tends to clash with many of the recognized rights of the individual in Shari'a, as well as with the wider levels of unity and cooperation among people. The right to work, for example, is recognized in Shari'a for every Muslim, indeed every individual, but the nation state tends to confine it only to its own nationals. Does it sound at all right to disallow a Muslim, or anyone for that matter, the right to earn a living, or to deny him or her the right to continued residence in a country or place, even after having lived there for some years? This is merely to point out that a certain tension remains between the relatively more open approach of Shari'a and the more restrictive attitude that underlines the basic ideas of nationalism and nation state. More research effort needs to be undertaken to address these and other relevant issues on citizenship from both the Shari'a and nationalist perspectives. The relatively underdeveloped state of the existing research on this issue is partly caused by the fact that people seem to have taken for granted the moral validity of nationalism and the challenge it presents to the wider humanitarian call for unity and cooperation among people.

As noted earlier, the *dār al-Islām–dār al-ḥarb* concept has no clear origin in the Qur'an or Sunna and is a juristic development of later times that was most likely prompted by the political interests of the Abbasid Empire. The contemporary generation of Muslims are not necessarily bound by it, especially in view of the changed realities of international relations and geo-political considerations in the Muslim world today. The world is now home to over 50 independent Muslim states, not just one big political

[105]Cf. Manna (n 3) 85.

entity that could, in political terms, be described as *dār al-Islām*. The complex network of international treaties and bilateral agreements that now exist between the Muslim and non-Muslim countries cannot accommodate the existence in concept or in reality of *dār al-ḥarb*, which is rooted in the dubious idea of accepting war as a normal state of relations with the rest of the world. These juristic constructs were controversial to begin with and have now lost any relevance to the prevailing conditions of the world today.

Yet there is cause for further reflection, to quote Zainab Badawi, as to how nationalism is reasserting itself as a result of advancements in globalization, and the European Union at the expense often of cultural minorities. With reference to globalization, Badawi states: "As globalization blurs national boundaries, people are beginning to retreat into their own sense of self and looking for past assurances in order to validate themselves. Racist groups, with names such as Racial Harmony, and First Amendment Purists, One Nation Party, National Front etc., are making skilful use of the internet to propagate their exclusivist views and prejudices all over again."[106]

The state is the unit of organization at present and the *dār al-Islām* of the past has been dismembered and replaced by territorial units. It is no longer realistic to identify a certain part or region of the world as *dār al-ḥarb*, for peace is now the generally accepted norm and individuals and states relate to one another through reciprocity and peaceful agreements. *Dār al-ḥarb* now only applies perhaps to exceptional situations when war breaks out between countries, and even that should be seen as temporary and transitional – which does not necessarily justify the application of the concept of *ḥarbī* (enemy at war) to all the citizens of the enemy country. The basic problem in all of this stemmed, according to al-Shawi, from the fact that citizenship as a concept was unfamiliar to our *fiqh* scholars and the notions of *dār al-Islām* and *dār al-ḥarb* seemed suitable, even convenient, at a time when the Islamic empire was a dominant world power. The nation-state as a unit of organization, and citizenship as a basic framework of identity and relationships have replaced those earlier concepts. The *umma* nevertheless remains as a wider framework of religious fraternity among Muslims, to which all Muslims belong regardless of their nationality and place of residence.[107]

Having discarded the idea of *dār al-ḥarb*, which had been a stumbling block in the way of constructing a sound theoretical approach to citizenship in Islamic law, I believe that Islamic law provides a set of general principles relating to citizenship that encourage flexibility and openness. This is due mainly to the humanitarian outlook of the Qur'an and Sunna, which designates mankind as God's vicegerent and custodian of the earth to establish a just order therein. The ideals of human dignity, equality and justice in the Qur'an and Sunna tend to view *homo sapiens* as a single entity without recognition, at that level, of nationality and race or of divisive factors that would impede the natural freedom of the individual and his choice of residence. Having said that, however, considerations of a judicious policy within the general framework of *siyāsa shar'iyya* may still be utilized to determine a policy framework that is beneficial to all concerned, without, however, violating the basic ideals of equality and justice as they are expounded in the sources of Islam.

[106]Zainab Badawi, 'The Dilemma of Identity in a Multicultural Europe' (2001) 27 *Islam 21* 2).
[107]Ibid. 418–419.

Acknowledgements

I would like to thank my colleagues Fariz Zainal and Abdul Karim for their generous assistance in helping me prepare this text for publication.

References

‘Afīfi, M.S., 1987[1407]. *Al-Mujtama’ al-Islamī wa Huqūq al-Insān.* Cairo: Idārat al-Ṣaḥāfa wa’l-Nashr bi-Rābitat al-‘Alam al-Islāmi.

‘Aliyah, S.Q., 1988[1401]. *Naẓariyyat al-Dawlah wa Ạdābuha fi’l-Islām.* Beirut: Al-Mu’assasa al-Jami’iyya.

‘Awdah, ‘Abd al-Qadir, 1981[1401]. *Al-Tashrī‘ al-Jinā‘ī al-Islāmi Muqārinan bi’l-Qānūn al-Wad’i.* Vol. 1 Cairo: Maktaba Wahba.

Abū Dāwūd 1995[1416]. *Sunan Abū Dāwūd,* Mustafa Dib al-Bugha (ed.). Damascus: Dār al-‘Ulum al-Insāniyya.

Abū Ḥabīb, S., 1985[1406]. *Dirāsah fi Minhāj al-Islām al-Siyāsi.* Beirut: Mu’assasa al-Risāla.

Abū Zahra, M., 1965[1385]. *Tanẓīm al-Islām li’l-Mujtama’.* Cairo: Dār al-Fikr al-‘Arabi.

Al-Affandi, ‘Abd al-Wahhab, 2001. ‘I‘ādat al-Naẓar fī al-mafhēm al-ṭaqlīdī li-al-Jamā‘a al-siyāsiyya fī’l-Islām: muslim am mawāṭin? *Al-Mustaqbal al-‘ArabĪ* 22 (264).

Ahmad, W. and Husband, C., 1993. ‘Religious identity, citizenship and welfare: the case of Muslims in Britain. *American Journal of Islamic Social Science* 10.

Ansari and Esposito (eds), 2001. *Muslims and the West.* Islamic Research Institute, International Islamic University.

Asad, M., 1966. *Principles of state and government in Islam.* Berkeley: University of California Press.

al-‘Awa, M. Salīm, 1998[1419]. *Al-Fiqh al-Islāmī fi Ṭarīq al-Tajdīd.* 2nd edn. Beirut: al-Maktab al-Islāmī.

Badawi, Zainab (2001). The dilemma of identity in a multicultural Europe. *Islam* 21 (27).

Al-Bishrī, Ṭāriq, 1998[1418]. *Bayn al-jāmi‘a al-dīniyya wa’l-jāmi‘a al-waṭaniyya fi’l-fikr al-siyāsī.* Cairo: Dār al-Shurūq.

Al-Bukhārī, Muḥammad b. Ismā‘īl (1979). *Ṣaḥīḥ al-Bukhārī.* Muhammad Muhsin Khan (trs.). Vol. 9. Lahore: Qazi Publications,.

Constitution of Medina (known in Arabic as Dustūr al-Madina) (1968) in Montgomery-Watt, *Islamic political thought: the basic concepts.* Edinburgh: Edinburgh University Press.

Daniel, N., 1993. *Islam and the West: the making of an image,* revised edn. Edinburgh: Edinburgh University Press.

Dāraquṭnī, ‘Ali Ibn ‘Umar, 1386, A.H.. *Sunan Dāraquṭnī,* Al-Sayyed ‘Abd Allah Hashim (ed.). Beirut: Dār al-Ma’rifa.

Ewing, K., 1993. Citizenship and employment, in: R. Blackburn (ed.), *Rights of Citizenship.* London: Mansell.

El-Fadl, K.A., 1994. Islam and Muslim minorities. *Islamic Law and Society* 1 & 2.

Fu‘ad Abd al-Mun‘im Ahmad, 1991[1411]. *Uṣēl Niẓām al-ḥukm fi’l-Islam.* Alexandria: Mu’assasah Shabab al-Jami’a.

Al-Ghanoushi, R., 1993[1413]. *Ḥuqūq al-Muwāṭana, Huquq Ghayr al-Muslim fi’l-Mujtama al-Islami,* 2nd edn. Herndon, Va & Tunis: Al-Ma’had al-Alami li’l-Fikr al-Islami.

Al-Ghazālī, Shaykh Muḥammad, 1960. *al-Ta‘aṣṣub wa’l-Tasāmuā Bayn al-Masiḥīyya wa’l-Islām.* Cairo: Dār Kutub Haditha.

Ghazāwī, M.S., n.d. *Al-Ḥurriyyat al- ‘Ạmma fi’l-Islām.* Alexandria: Mu’assasah Shabab al-Jami’a.

Al-Ḥadīd, Ibn Abī. *Sharḥ Nahj al-Balāghah.* Beirut: Dar Ihya’ Turath al-‘Arabi.

Hasan, I.H., and ‘Ali I.H., n.d. *Al-Nuẓum al-Islamiyyah.* Cairo: Maktaba al-Nahda al-‘Arabiyya.

Al-Hindī, al-Muttaqī, 1313 A.H. *Kanz al-‘Ummāl fi Sunan al-Aqwāl wa’l-Af’āl,* vol. 4 Hyderabad: Dakan.

Ibn ‘Ashūr, ‘Ayyād, 1998. *Al-Ḍamīr wa’l-Tashrī‘, al-‘Aqliyya al-Madaniyya wa’l-Huqūq al-Hadītha.* Casablanca: al-Markaz al-Thaqafī al-‘Arabī.

Ibn Ḥazm, Muhammad b, ‘Ali b. Ahmad b. Sa‘id al-Zāhirī. 1988[1408]. *Al-Muṣallā. Ahmad Muhammad Shakir* (ed.). Cairo: Matba’a al-Nahda.
Ibn Hishām, ‘Abd al-Malik, 1936. *Al-Sīra al-Nabawiyya.* Cairo: Mustafa al-Babi al-Halabi.
Ibn Mājah, 1981[1401]. *Sunan Ibn Mājah.* Istanbul: Cagli Yayinlari.
Ibn Qudāma, Muwaffaq al-Dīn Abu Muḥammad ‘Abd Allāh, 1367 A.H. *Al-Mughnī,* vol. 12. Cairo: Matba’at al-Manar.
Ibn Taymiyya, Taqi al-Dīn Aḥmad, 1398 A.H. *Al-Siyāsah al-Shar ‘iyyah fi Iṣlāḥ al-Rā‘i wa’l Ra‘iyyah,* ‘Abd al-Rahmān b. Qāsim (ed.). Beirut: Mu’assasāt al-Risāla.
Al-‘Ili, ‘Abd al-Hakim Hasan, 1983[1413]. *Al-Ḥurriyyāt al-‘Amma fi’l-Fikr wa’l-Niẓām al-Siyāsī al-Islāmī.* Kuwait: Dār al-Kitāb al-Hadīth.
Kamali, Mohammad Hashim, 1997. *Freedom of expression in Islam.* Cambridge: The Islamic Texts Society.
Kamali, Mohammad Hashim, forthcoming. *Rights to education, work and welfare in Islam.* Cambridge: The Islamic Texts Society.
Al-Kasani, ‘Ala al-Din, *1956*. *Badā’i’ al-Ṣanā’i’ fi Tartīb al-Sharā’i’.* Cairo: Matba’at al-Istiqama.
Al-Khāliḍī, Mahmud ‘Abd al-Majid, 1980[1400]. *Qawā‘id Niẓām al-Ḥukm fi’l-Islām.* Kuwait: Dār al-Buhūth.
Al-Khudarī, Muhammad, 1969[1370]. *Muḥāḍarāt fi Tārīkh al-Umam al-Islāmiyyah.* Cairo: al-Maktaba al-Tijariyya.
Kramer, G., 1998. *‘Dhimmī* or Citizen’, in J. Nielsen (ed.) *The Christian-Muslim frontier.* London: I.B. Tauris.
Madkur, M.S., 1983[1403]. *Ma ālim al-Dawlah al-Islāmiyyah.* Kuwait: Maktabat al-Falah.
Mahmassani, S.R., 1979. *Arkān Ḥuqūq al-Insān fi’l-Islām.* Beirut: Dār al-‘Ilm li’l-Malāyīn.
Manna, H., 1996. *Citizenship in Arab Islamic history.* M. Wafa and W. Wagdy (trs.). Cairo: Cairo Institute for Human Rights Studies.
Mawdūdī, S., 1969. Abu’l A’la. *Naẓariyyat al-Islām wa Hadyuh.* Cairo: Dar al-Fikr.
Maudūdī, S. Abu’l A’la, 1979. *The Islamic Law and Constitution.* Lahore: Islamic Publications Ltd., reprint.
Al-Māwardī, Abū’l-Ḥasan, 1386 A.H. *Kitāb al-Aḥkām al-Ṣulṭāniyya,* 2nd edn. Cairo: Muṣtafa al-Babi al-Halabi.
Mūsā, M.Y., 1961. *Al-Islām wa’l-Ḥayāt: Dirāsāt wa Tawjīhāt.* Cairo: Maktaba Wahba.
Muslim, Ibn Ḥajjāj al-Nishapūri, 1984[1404]. *Mukhtaṣar Ṣaḥīḥ Muslim,* Muhammad Nasir al-Din al-Albani (ed.), 2nd edn. Beirut: Dār al-Maktab al-Islāmi.
Mutawalli ‘Abd al-Ḥamīd, 1974. *Mabādi’ Niẓām al-Ḥukm fi’l-Islām.* Alexandria: Mansha’at al-Ma’arif.
Al-Nabhānī, Taqi al-Dīn, 1964. *Muqaddimat al-Dustūr.* Kuwait.
Omhae, K., 1995. *The end of the nation state: the rise of regional economics.* New York: The Free Press.
Osman, M. F., 1977. *Majallah al-Muslim al-Mu‘āṣir,* vol. 2.
Partington, M. 1993. Citizenship and housing, in: R. Blackburn (ed.), *Rights of citizenship* London: Mansell.
Al-Qaraḍāwī, Y., 1977. *Ghayr al-Muslimīn fi’l-Mujtama’ al-Islāmi.* Cairo: Maktaba Wahba.
Al-Qurṭubī, Abū ‘Abd Allāh Muḥammad, 1967/1387. *Al-Jāmi’ li-Ahkām al-Qur’ān* (also known as *Tafsīr Al-Qurṭubī).* Cairo: Maṭba’a Dār al-Kutub.
Quṭb, M., 1954. *Shubhat ḥawla al-Islām.* Cairo.
Quṭb, Sayyid, 1954[1373]. *Al-’Adālah al-Ijtimā‘iyyah fil-Islām,* 4th edn. Cairo: ‘Isa al-Babi al-Halabi.
Ramadan, S., 1992. *Islamic law: its scope and equity,* 2nd Edn. Kuala Lumpur: Muslim Youth Movement of Malaysia.
Riḍā, Muhammad R., 1341 A.H. *Al-Khilāfah aw al-Imāmah al-‘ Uẓmā.* Cairo: Matba’at al-Manar.
Al-Saffār, Shaykh Ḥasan, 1996. ‘Al-Waṭan wa-al-Muwāṭana: al-Huqūq wa’l-Wājibāt’, *al-Kalima* 10.
Salam, N. 1997. The emergence of citizenship in Islamdom, *Arab Law Quarterly,* 12 (2).
Saleh, N. (1995). Company legislation in the Gulf: recent developments, in H.L. Ruttley and C. Mallat (eds.) *Commercial Law in the Middle East.* London: Graham & Trotman.

Al-Sanhūrī, ‘Abd al-Razzāq, 1989. *Fiqh al-Khilafah wa Taṭawwuruha,* Nadia al-Sanhuri and Tawfiq Muhammad al-Shawi (eds). Cairo: Al-Hay’at al-Misriyya li’l-Kitāb.

Al-Sibā‘ī, Muṣṭafā, 1960[1379]. *Ishtirākiyyāt al-Islām.* Damascus: al-Dār al-Qawmiyya li’l-Ṭibā’a wa’l-Nashr.

Shahrūr, M., 2000. *Naḥwa Uṣūl Jadīdah li’l-Fiqh al-Islāmī: Fiqh al-Mar’a.* Damascus: al-Ahāli li’l-Ṭibā‘a wa’l-Tawzī’ wa’l-Nashr.

Sharaiyra, W.I.S., 1999. *Right and freedom of movement in Islam.* Kuala Lumpur: A.S. Noordeen.

Al-Sayed, A.M.A., 1982. *Social ethics of Islam: classical Islamic Arabic political theory and practice.* New York: Vantage Press.

Al-Tabrīzī ‘Abd Allah al-Khatib, 1977[1399]. *Mishkāt al-Maṣābiḥ,* Muhammad Nasir al-Din al-Albani (ed.), 2nd edn. Beirut: Al-Maktab al-Islāmī.

Yusri, A., 1993. *Ḥuqūq al-Insān wa Asbāb al-‘Unf fi’l-Mujtama’ al-Islāmī Fi aw’ al-Aḥkām al-Sharī’ah.* Alexandria, Egypt: Mansha’at al-Maarif.

Zaydān, ‘Abd al-Karim, 1963. *Aḥkām ahl al-dhimmah wa’l-musta’minīn fi Dār al-Islām.* Baghdad: Maktabat al-Quds.

Zaydān, ‘Abd al-Karim, 1952[1372]. *Al-Farḍ wa’l-Dawlah fi’l-Sharī‘a al-Islāmiyya.* Gary, Indiana: al-Ittiḥād al-‘Alamī li’l-Munaẓẓamāt al-Ṭullābiyya.

Al-Zuhaylī, Wahbah, 1989[1409]. *Al-Fiqh al-Islāmī wa Adillatuh.* 3rd edn. Damascus: Dār al-Fikr.

Copyright of Journal of Islamic Law & Culture is the property of Routledge and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.